Presented to Babu Lal Gopal Mukerji, B.A., LL.B.
with the Authors' best regards.
Ayodhyadhar
and
Narsingh Prasad.
Gorakhpur. The 28th March 1906.

THE N.-W. P. TENANCY ACT.

Sent to Sgt Waters
Inniskilling Dragoons
Mutera
by Mr Day Munsif
of Mutera
1912

THE N.-W. P. TENANCY ACT.

(No. II of 1901).

WITH

NOTES, REFERENCES TO THE BENGAL, THE PUNJAB AND CENTRAL PROVINCES TENANCY ACTS, AND THE OUDH RENT ACT, RULINGS OF THE HIGH COURTS AND OF THE BOARD OF REVENUE, CIRCULARS OF THE BOARD OF REVENUE, REPORT OF THE SELECT COMMITTEE ON THE BILL, EXPLANATIONS OF ABBREVIATIONS APPENDICES AND A FULL INDEX.

BY

AYODHYA DAS, B. A., BAR-AT-LAW

AND

NARSINGH PRASAD, M. A., VAKIL,

HIGH COURT, N.-W.P.

GORAKHPUR.

FIRST EDITION.

CALCUTTA

S. K. LAHIRI & CO.,

54, College Street.

1906.

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PRINTED BY SOSIBHUSAN CHAKRABARTI
57, HARRISON ROAD.

PREFACE.

In presenting this book to the public our aim has not been simply to make a collection of the case-law on the subject, but we have also endeavoured to give short explanatory notes, wherever we deemed them necessary, to make the meaning of the sections clearer. The great change from the old law into the present Act and the paucity of case law on the new Act owing to its having come into force recently, necessitated our taking this course, and we trust that the opinions and explanations offered by us will prove helpful. We are conscious that the book must contain many shortcomings, for which we crave the indulgence of the public and hope that the book will be received favourably.

The rulings have been brought down to the end of 1905. Extracts from the report of the select committee on the Bill have, wherever found to be useful, been inserted in appropriate places. As the new Act contains many sections drawn on the lines of the Bengal, the Panjab and the Central Provinces Tenancy Acts and the Oudh Rent Act, we have given references to those Acts and also inserted appropriate rulings under those Acts. The Circulars of the Board of Revenue containing rules framed by the Board, given in the Appendix, will also be found useful.

We must acknowledge here the great assistance that we have received in the compilation of this book from Mr. House's well-known commentary on the old Act and Mr. Justice Rampini's Bengal Tenancy Act. We are also extremely grateful to our friend Babu Jay Gopal Ashthana, B. A., L. L. B., for having revised the manuscript and seen it through the press and for the many valuable suggestions made by him in the compilation of the book. But for his assistance the book would not have been out by this time.

GORAKHPUR :
January, 1906.

AYODHYA DAS
AND
NARSINGH PRASAD.

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ADDENDA.

Add to page 5, *line* 4. vide Saligram *v.* Kharagjit A. L. J. vol 1, p. 428.

„ *page* 8, *line* 17. Section 3 of Act II of 1901 does not enable the Zamindar to bring a suit for the ejectment of his tenant on the basis of a sub-lease made after 1st April 1900, but before 1st January 1902 (Ran Bahadur Gobind Rai *v.* Sunder Man Gobind Rai, Rev. L. J., vol. 1, p. 44 ; S. D. B. R., No. 1 of 1903).

page 43, *line* 30. A vendor having transferred the actual possession of his Zamindari and *sir* land to the vendee and waiving, by his failure to enter into possession as a tenant, the statutory rights conferred upon him by section 7 A, Act IV of 1901, cannot be deemed to be a tenant with such rights (Thakur Harihar Bakhsh *v.* Gajadhar Bakhsh, Rev. L. J., vol. II, p. 18 ; S. D. B. R., No. 11 of 1904).

page 40, *line* 36. Section 9 of Tenancy Act refers only to the record of fixed-rate tenants and permanent tenure-holders (Maharaja Raja Ramji *v.* Abdulla Khan, Rev. L. J. Vol. 1, p. 101 ; S. D. B. R., No. 4 of 1904).

page 52, *line* 23 **Acquisition of occupancy right under rent-free grantee:**—A cultivator under "rent-free grantee" can acquire a right of occupancy in land cultivated by him continuously for 12 years (Ajita *v.* Gobind Prasad, Rev. L. J. vol. II, p. 17 ; S. D. B. R., No. 10 of 1904).

„ *page* 62, *line* 14. The "continuous holding" of a tenant is not broken by ejectment under section 40, Act XII of 1881, effected after 1st July 1900, he having never in fact been actually dispossessed (Salig Ram *v.* Haji Mahammad Karim-Ullah Khan, Rev. L. J. vol. I. p. 82 ; S. D. B. R., No. 9 of 1903).

„ *page* 65, *line* 27. Salig Ram *v.* Haji Mahammad Karimullah Khan, Rev. L. J. vol. I, p. 82 ; S. D. B. R., No. 9 of 1903.

„ *page* 70, *line* 16. As to transferability of the interest of an occupancy tenant see Kehar *v.* Hasan Ali Khan A. L. J., vol. II, p. 583.

„ *page* 74, *line* 42. See also Rajnarain Mittar *v.* Budh Sen (W. N., 1904, p. 240) ; Basa Mal *v.* Ghayas-ud-din (W. N., 1904, p. 276) ; Bhajan Lal *v.* Muhammad Abdussamad Khan (W. N. 1905, p 90).

„ *page* 78, *line* 8. A *Chela* (disciple) of a *mahant* cannot as such succeed to the right of occupancy tenancy of the *mahant* (Bishun Deo Singh *v.* Mahadeo Singh), Rev. L. J. vol. II, p. 13 ; S. D. B. R., No. 8 of 1904).

„ *page* 78, *line* 31. Where the interest of an occupancy tenant has devolved on his widow, under section 22 (*h*) till her death or re-marriage, a collateral, who cultivated jointly with the widow after her husband's death, but did not share in the cultivation during his life time, is not entitled to succeed to the occupancy holding on the death of the widow (Ram Nath Chaubey *v.* Dasai Ahir ; Rev. L. J. vol. II, p. 43. S. D. B. R., No. 3 of 1905).

„ *page* 79, *line* 20. **Succession to occupancy rights of a female** : —Under section 22 of the Tenancy Act read with section 13 (1) of the General Clauses Act the interest of a woman possessed of full occupancy rights would devolve (1) on her male lineal descendant, (2) on her brother, and subject to the condition laid down in the proviso to section 22 of the Tenancy Act, (3) on her daughter's son, and (4) on her nearest male collateral (Ikram-ud-Din *v.* Shaikh Arshad Ali, Rev. L. J. vol. II, p. 35 ; S. D. B. R., No. 2 of 1905).

„ *page* 80, *line* 29. Sections 25 and 31 of Act II of 1901 refer only to sub-leases granted after and not before the commencement of the Act (Munshi Debi Prasad *v.* Gokul, Rev. L. J. vol. I. p. 43 ; S. D. B. R., No. 4 of 1902).

„ *page* 84, *line* 17. An usufructuary mortgage cannot be treated as a sub-lease within the meaning of section 28 of Act II of 1901, and the cases of mortgages made before the commencement of the said Act are governed by the Board's ruling, Chhote Lal *v.* Ajudhia Prasad (Selected Decision, No. 5 of 1901); [Musammat Khudeja Bibi *v*, Goberdhan Rai, Rev. L. J., vol. I, p. 45, S. D. B. R., No. 2 of 1903].

Section 28 of the Tenancy Act applies to a sub-lease granted before the commencement of that enactment only when the interest of a tenant is extinguished after the passing of that Act (Onkar Das *v.* Mahmud Khan, Rev. L. J. vol I. p. 60; S. D. B R., No. 5 of 1903).

See. S. D. B. R., No. 4 of 1902.

„ *page* 87, *line* 32. Section 31 of Act II of 1901 has no retrospective effect and does not apply to sub-leases made before the 1st January 1903, nor does section 3 of the said Act enable the Zamindar to bring a suit for the ejectment of his tenant on the basis of a sub-lease made after 1st April 1900, but before 1st January 1902 (Ran Bahadur Gobind Rai V. Sunder Man Gobind Rai, Rev. L. J. vol I. p. 44; S. D. B. R., No 1 of 1903).

„ *page* 91, *line* 42. "Proceedings" include the whole proceedings from the filing of the plaint down to the final order in execution. Hence where a suit was instituted before the coming into force of the new Tenancy Act, but an appeal was filed after its coming into force, *held*, that the proceedings commenced when the plaint was filed, and that the last clause of section 32, Act No II of 1901 did not apply to such proceedings by reason of section 11 of the General Clauses Act. (I of 1887, U. P.) [Saligram v. Kharagjit, A. L. J. vol I, p. 428].

„ *page* 121, *line* 14. A non-occupancy tenant, whose rent has been enhanced by an agreement, has a right to hold the land for a term of five years from the date of enhancement under section 47 (*b*) of the Tenancy Act, and that if the landholder desires

to prevent this period from counting towards the accrual of occupancy right, his only course is to grant the tenant a lease for seven years (Raghunath v. Lala Kishori Saran, Rev., L- J. vol II, p. 33, S. D. B. R., No 1 of 1905).

„ *page* 144 *line* 39. Section 5 of the Indian Limitation Act (X V of 1877) applies to ejectment suits brought under section 58 and 63 (1) of the Tenancy Act (II of 1901), so that if the period of limitation prescribed for any such suit expires on a day when the Court is closed, the suit can be accepted, if filed on the next day when the Courtre-opens, (Oodam v. Behu Mal, Rev. L. J. vol II, p. 11 ; S. D. B. R., No. 7 of 1904)

„ *page* 153, *line* 5. A suit for ejectment of a non-occupancy tenant instituted on 30th June 1903 was premature, with reference to section 63, Tenancy Act. and that applications for ejectment, other than applications under section 57 *(a)*, should be instituted in the month of July, August, and September, inasmuch as the words "between the 30th day of June and the first day of October" in that section exclude 30th June and first October (Durga Prasad v. Girdhari, Rev. L. J. vol II, p. 15 ; S. D. B. R. No. 9 of 1904).

„ *page* 166 *line* 14. In a case of ejectment where no action was taken under section 40 of Act XII of 1881 before Act II of 1901 came into force, *held*, that the tenant could not be ejected upon an application under section 71 of the latter Act, and that the landlord must proceed by suit under that Act (Nawab Muhammad Ibrahim Ali Khan v. Bhagwana and Bhana, Rev. L. J. vol I, p. 42 ; S. D. B. R., No 3 of 1902).

„ *page* 173, *line* 25. A landholder, who had obtained an order under Act No XII of 1881, for the ejectment of one of his tenants, applied to purchase the tenant's standing crops. Whilst his application was pending the Agra Tenancy Act, 1901, came into force. An award was ultimately made under section 42 of Act XII of 1881, and the tenant accordingly brought a suit under the provisions

of that Act to enforce the award so made. *Held* that, notwithstanding the change of procedure introduced by the new act, the plaintiff's suit should not be dismissed, but the order passed under the old Act might be treated as if passed under the new act, and the plaintiffs suit as an application to enforce such order (Jhagga Lal v. Chandi Prasad, W. N. 1905, p. 247).

EXPLANATION OF ABBREVIATIONS.

All.	... Allahabad.
A. L. J. or A. L. J. R.	... Allahabad Law Journal Reports.
Agra.	... Agra High Court Reports.
Bom.	... Bombay.
B. L. R.	... Bengal Law Reports.
Calc.	... Calcutta.
C. W. N.	... Calcutta Weekly Notes.
F. B.	... Full Bench.
I. L. R.	... Indian Law Reports.
L. R., R. R. S. ...	... Legal Remembrancer, Rent and Revenue series.
L. R., H. C. S. ...	... Legal Remembrancer, High Court Series.
Mad.	... Madras.
N. W. P.	... North Western Provinces High Court Reports.
P. R.	... Punjab Record.
p.	... Page.
Rev L. J.	... Jacob's Revenue Law Journal.
S. D. B. R. ...	... Select decisions of the Board of Revenue.
S. D. A.	... Suddar Dewany Adawlat Reports.
Vol.	... Volume.
W. N.	... Allahabad Weekly Notes.
W. R.	... Sutherland's Weekly Reporter.

THE N.-W. P. TENANCY ACT.

ACT No. II OF 1901.

Passed by the Lieutenant-Governor, N.-W. P. and Oudh, in Council.

(RECEIVED THE ASSENT OF THE LIEUTENANT-GOVERNOR OF THE NORTH-WESTERN PROVINCES AND OUDH ON THE 24TH OCTOBER 1901, AND OF THE GOVERNOR-GENERAL ON THE 19TH DECEMBER 1901, AND PUBLISHED UNDER SECTION 40 OF THE INDIAN COUNCILS ACT, 1861, ON THE 21ST DECEMBER 1901.)

An Act to consolidate and amend the Law relating to Agricultural Tenancies and certain other matters in the North-Western Provinces.

WHEREAS it is expedient to consolidate and amend the law relating to agricultural tenancies and certain other matters in the North-Western Provinces; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. (1) This Act may be called the North-Western Provinces Tenancy Act, 1901.

Local extent.

(2) It extends, in the first instance, to all the territories for the time being administered by the Lieutenant-Governor of the North-Western Provinces, except the areas specified in the first schedule :

but, subject to the provisions of Bengal Regulation VII of 1828, the Local Government may, by notification in the Gazette, extend the whole or any part of this Act to all or any of the areas so excepted ; and

Commencement.

(3) It shall come into force on the first day of January, 1902.

This section corresponds to sec. 1 of Act XII of 1881.

Sub-Section (2) :—

'Territories for the time being administered by the Lieutenant-Governor :'—Of two agricultural holdings situated in the Ballia District of the North-Western Provinces, each separately assessed to rent one became submerged by the river Ganges, and subsequently re-appeared on the other side of the river in the Shahabad District of Bengal. *Held*, that the Rent Courts of the Ballia District had no jurisdiction to entertain a suit for the rent of this holding (*Beni Prasad Kuari* v. *Ratul Thakur*, W. N., 1901, p. 74).

'For the time being' :—does not mean the time from which this Act comes into force, but it refers to the time when the question arises whether this Act applies to any particular area.

'Schedule':—means the Schedule to this Act [N.-W. P. and Oudh General Clauses Act I of 1887, sec. 2, Clause (4)].

'Subject to the provisions of Bengal Regulation VII of 1828'.—For the Bengal Regulation VII of 1828 see Appendix A. See also notes on sec. 2, sub-section (2). As the family domains of the Maharaja of Benares which are governed by Bengal Regulation VII of 1828 are included in the areas excepted in the first Schedule, it has therefore been provided here that if the Local Government, by notification in the Gazette, extends the whole or any part of this Act to such of the areas specified in the first Schedule to this Act where Bengal Regulation VII of 1828 is in force, the provisions of this Act, or of the portion of this Act so extended, as the case may be, will be subject to the provisions of the above Regulation. The above Regulation will not be repealed

under section 2, sub-section (2). But if the whole or any part of this Act is extended to such of the areas specified in the first Schedule where the above Regulation is not in force, so much of any Act or Regulation in force therein as is inconsistent with this Act, or the portion thereof so extended, as the case may be, will be thereby repealed under section 2, sub-section (2).

Acquisition of occupancy rights in the Family Domains of the Maharajah of Benares :—See notes on this head under section 11.

Sub-Section (3) :—The time of the commencement of the Act is the 1st of January, 1902. But in respect of the matters mentioned in section 3 it will have a retrospective effect (vide section 3).

Repeal.

2. (1) The enactments mentioned in the second schedule are repealed to the extent specified in the third column thereof.

(2) When this Act or any portion thereof is extended to any of the areas excepted in the first schedule, so much of any Act or Regulation in force therein as is inconsistent with this Act, or the portion thereof so extended, as the case may be, shall be thereby repealed.

(3) The repeal of any enactment by this Act shall not legalise any practice which immediately before the passing of such enactment was illegal, and shall not revive any right, privilege, matter, or thing not in force or existing at the commencement of this Act.

(4) All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred, and places appointed under the enactments hereby repealed shall, so far as may be, and without prejudice to the provisions of section 11 of the North-Western Provinces and Oudh General Clauses Act, 1887, be deemed to have been made

N.-W. P. & O. I of 1887.

issued, conferred, granted, fixed, acquired, incurred, and appointed hereunder.

(5) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act, or to the corresponding portion thereof.

This section corresponds to sec. 2 of Act XII of 1881.

Sub-Section (2) :—The language of this sub-section might be held to lay down that the provisions of sec. 9 of Bengal Regulation VII of 1828 would no longer govern the extension of this Act to any portions of the Family Domains of the Maharaja of Benares. It is therefore that the Legislature has inserted the words "subject to the provisions of Bengal Regulation VII of 1828" in section 1, sub-section (2). (Vide Report of the Select Committee printed at p. 48 of the N.-W. P. and O. Gazette, dated 22nd June, 1901).

Sub-Section (3) :—This sub-section corresponds to sec. 2 (4) of the Bengal Tenancy Act.

Effect of Repeal of enactments :—The provisions of this sub-section are according to the rule laid down in section 7 (1) of the General Clauses Act (X of 1897) in which it is provided that "for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, it shall be necessary expressly to state such purpose," and with the rule of English law enacted by sec. 5, 13 and 14 Vict, c. 21, that "where any Act repealing in whole or in part any former Act is itself repealed, such last repeal shall not revive the Act or provisions before repealed, unless words be added reviving such Act or provisions."

Similarly, any practice which immediately before the passing of Act XII of 1881 had been declared illegal by the said Act, would not be legalised by the repeal of Act XII of 1881.

Moreover, the last clause of this sub-section shows that any right, privilege, matter, or thing not in force or existing at the commencement of this Act, will not be revived, *notwithstanding such right, privilege, matter, or thing has been declared legal by this Act.* For instance, before the commencement of this Act, B, an occupancy tenant of A, dies, leaving only a brother, C, (who did not share in the cultivation of his holding) and a collateral relative, D, who shared in the cultivation of his holding. Under Act XII of 1881, D would succeed to B in preference to C, while under sec. 22 of this Act, C would be entitled to succeed. But from this sub-section it would appear that if D has already

succeeded B before the commencement of this Act, C could not revive and enforce as against D his right of succession to A, as allowed to him under this Act. D would, inspite of the provisions of this Act, remain in cultivatory possession of B's holding.

Sub-Section (4) :—This sub-section corresponds to para. 2, section 2 of Act XII of 1881.

The general principle of construction is that an Act is not to be held to take away a vested right unless such an intention is expressed or appears by necessary implication (*Debiruddi* v. *Abdur Rahim*, I. L. R., 17 Calc., 196, at p. 199).

'**Rights acquired**' :—The provisions of this sub-section will be applicable only where a right has been acquired before the commencement of this Act. In *Naik Ram* v. *Murli Dhar*, (I. L. R., 4 All., 371), it was held that "a landholder who had attached the occupancy right of an occupancy tenant in certain land in execution of a decree before Act XII of 1881 came into force was not entitled under sec. 2 of that Act to bring such right to sale after that Act came into force, that section not saving the right of a landholder to bring such right to sale in execution of a decree and sec. 9 of that Act expressly prohibiting the sale of such a right in execution of a decree." In this case the right to bring the occupancy right to sale had not accrued to the landholder before the commencement of Act XII of 1881.

The above ruling was followed by a full Bench ruling in *Murli Rai* v. *Ledri*, (I. L. R., 7 All., 851), in which it was held as follows :—"The occupancy tenant of certain land, before Act XII of 1881 came into force, mortgaged his rights to his zamindar by a deed of conditional sale. The zamindar sued the heirs of the conditional vendee for foreclosure and possession of the mortgaged property. *Held*, that the transaction of mortgage which was subsequently to become a sale was not a transaction to which section 2 of the Rent Act applied, because the sale would not have effect till after the Act came into force." In this case the right to foreclosure and possession had accrued after Act XII of 1881 had come into force.

In *Moheshwar Pershad Narain Singh* v. *Sheobaran Mahto*, (I.L.R., 14 Calc., 621), a landlord sued to eject a tenant who had executed a *sulehnama* agreeing to hold the land in suit for a specified time at a specified rent, and providing that the landlord was at liberty to enter on the lands at the expiry of the period. The suit was instituted on the 6th October, 1885, i.e., before the commencement of the Bengal Tenancy Act (VIII of 1885). It was found that at the date of the *sulehnama* the tenant had acquired a right of occupancy with respect to some of the land in suit and it was held

that the tenant was not entitled to the benefit of sec. 178 (1) (*b*) of the above Act, because at the time the suit was brought there was nothing to prevent his contracting himself out of his rights.

'Without prejudice to the provisions of sec. 11 of the N.-W. P. and Oudh General Clauses Act, 1887'. Section 11 of the N.-W. P. and Oudh General Clauses Act I of 1887 runs as follows :—"The repeal of any Act or Regulation shall not affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation, and the proceedings shall be continued and concluded as if the repealing Act had not been passed."

'So far as may be' :—i. e., so far as effect can be given to them consistently with the provisions of this Act, they are to be deemed to have been made under this Act, and to be governed by the provisions of this Act, (*Naik Ram Singh* v. *Murli Dhar*, I. L. R., 4 All., 371, at p. 373).

Appeals and rules of procedure after the commencement of this Act :—Appeals, other proceedings and rules of procedure in respect of judgments, orders, or decrees passed under Act XII of 1881 will be governed by the provisions of this Act, for "no suitor has any vested interest in the course of procedure" (*Per* Mellish, L. J., in *Republic of Costa Rica* v. *Erlanger*, 3 L. R., Chancery Division, 69). But suits, appeals or other proceedings commenced under Act XII of 1881 will be governed by the provisions of that Act and will be continued and concluded as if this Act had not been passed.

In *Uma Sundari Dasi* v. *Braja Nath Bhattacharji*, (I. L. R, 16 Calc., 347), it was held that where a decree for rent had been passed under Bengal Act VIII of 1869, but execution was not applied for until after the commencement of the Bengal Tenancy Act (VIII of 1885), execution must proceed under the proceedings of the latter Act.

Sub-Section (5) :—This sub-section corresponds to sec. 2 (3) of the Bengal Tenancy Act.

'Document' :—"Document shall include any matter written, expressed, or described upon any substance by means of letters, figures, or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter." [sec. 3 (16) of the General clauses Act X of 1897].

'Document' would, therefore, include judgments, orders and decrees. If, therefore, a judgment has been passed or a decree framed under any section of an enactment repealed by this Act, it will be construed to have been passed or framed under the corresponding section of this Act.

Restrictions on leases and agreements relating to tenancies.

3. (1) Notwithstanding anything contained in section 2, nothing in any lease or agreement made between a landholder and a tenant on or after the first day of April, 1900, shall take away or limit any right of the tenant as conferred or recognized by this Act.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), nothing in any lease or agreement made between a landholder and a tenant on or after the first day of April, 1900—

(*a*) shall prevent the tenant from acquiring a right of occupancy in land in accordance with the provisions of this Act;

(*b*) shall take away or limit the right of the tenant to make improvements and to claim compensation for the same in accordance with the provisions of this Act;

(*c*) shall entitle the landholder to eject the tenant otherwise than in accordance with the provisions of this Act;

(*d*) shall take away the right of the tenant to sub-let in accordance with the provisions of this Act;

(*e*) shall empower the landholder to distrain otherwise than in accordance with the provisions of this Act.

This section is altogether new. The object with which this section has been inserted is "that contracts entered into since 1st April, 1900, with the object of defeating the provisions of the Bill should have no effect in taking away or limiting the rights of tenants under the Bill.....The majority of the Committee find themselves forced to the conclusion that

the large number of notices of ejectment issued this year have been issued solely to evade and defeat the present legislation, and do not deserve any consideration as *bona fide* proceedings under the existing law." (Vide Report of the Select Committee printed at p. 54 of the N.-W. P. & O. Gazette, dated 22d June, 1901).

Sub-section (1) :—

'Lease or agreement' :—would seem to include both oral and written lease or agreement.

'Landholder and tenant' :—See Sec. 4 (5) and notes thereunder.

'Shall take away or limit' :—Anything contained in any lease or agreement made between a landholder and a tenant on or after the first day of April, 1900, which gives the tenant any right *over and above* that conferred or recognized by this Act, will not be affected by the provisions of this section. Leases or agreements mentioned in this section are not void altogether, but they are void in so far only as they *take away or limit* any right of the tenant as conferred or recognized by this Act.

Sub-section (2) :—The particular instances, mentioned in this sub-section, of taking away or limiting any right of a tenant as conferred or recognized by this Act are not exhaustive, but are merely illustrative.

Clause (a) :—

Agreements taking away occupancy rights in existence at the date of the agreement :—Though agreements taking away occupancy rights already in existence at the date of such agreement are not mentioned in this clause, yet it seems that such agreements would be void under sub-section (1), for a right of occupancy is a substantive right conferred by this Act on a tenant who has cultivated the same land continuously for twelve years, and the landholder cannot enforce an agreement which takes away such right, though a surrender or abandonment of an occupancy holding by a tenant is allowed by this Act. If, therefore, a tenant who has already acquired occupancy rights contracts with his landholder to give up his occupancy holding and does actually give it up, it would not be contrary to the provisions of this Act, for it would amount to a surrender of the holding within the meaning of sec. 83 (3).

Clause (c):—Though it might be provided in a lease or agreement made between a landholder and a tenant that the landholder would be entitled to re-enter on the holding after the expiry of the term of such lease, the landholder cannot, after the expiry of such term, eject the tenant and take possession of the holding by his own act. He must proceed to eject him according to the provisions of this Act. In *Inamullah* v. *Mir Jan*, (S. D. B. R., No. 8 of 1886), it was held that section 36, Act XII of 1881, which provides that the landholder

shall cause a written notice of ejectment to be served on the tenant cannot anyhow be over-ridden. See also sec. 56 and notes thereunder.

Clause (d) :—This clause does not apply to such leases or agreements made between a landholder and a tenant by which a tenant is allowed to sub-let *in contravention* of the provisions of this Act. For instance, if by an agreement made with his landholder on or after the 1st April, 1900, an occupancy tenant is allowed to sub-let for a term of more than five years (which is prohibited by sec. 25), such agreement will not be viod, as it does not *take away* any right of the tenant to sub-let as conferred by this Act.

Interpretation-clause.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) All words and expressions used to denote the possessor of any right, title, or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title, or interest of such person :

This sub-section corresponds to section 4 (7) of the Punjab Tenancy Act.

'**Predecessors and Successors**' :—would include the alienor and the alienee of the person referred to in this sub-section (C. J., No. 28, P. R. 1879 and C. J., No. 136, P. R. 1883). It appears that the successor in interest of a tenant must be actual successor and not a person merely claiming to succeed to the interest of a tenant. In R. J., No. 5, P. R. 1896, it was held that the members of a tenant's family who had jointly held with the tenant fell within the category of his predecessors in interest.

(2) "Land" means land which is let or held for agricultural purposes :

'**Held**' :—From the language of sec. 34 it appears that the word 'held' includes cases in which land is occupied without the consent of the landholder. The word 'held' is to be distinguished from the word 'occupied' which is a narrower word. 'Held' connotes actual physical occupation as well as occupation by some other on behalf of, or through the person holding. So in *Peari Mohan Mukherji* v. *Banshi Manjhi*, (I. L. R., 11 Calc., 757, at p. 774), the learned judges observed that land may also be held without being cultivated. 'Occupied' connotes actual physical possession only. The Select Committee in

their report printed at page 49 of the N.-W. P. and O. Gazette, dated 22d June, 1901, say :—"We have substituted the term 'held' for 'occupied' in this definition, as the expressions 'occupy' and 'occupation' are used, for special reasons, only in sections 32 and 32A of the Bill (now sections 33 and 34 of this Act), while everywhere else throughout the Bill the tenant is said to hold land. Moreover, the expression 'occupation' leaves room for doubt as to whether a tenant who (for instance) sub-lets his land, still occupies it or not,—a point on which doubts have been expressed."

'**Agricultural purposes**' :—would also include purposes incidental to agriculture. Land where manure is stored, or where sugarcane mill is erected, or *khaliyan* is also land within the meaning of this sub-section, because such land is let or held for purposes *incidental to agriculture.*

Purposes 'subservient to agriculture' are agricultural purposes (vide report of the Select Committee printed at page 49 of the N.-W. P. and O. Gazette, dated 22d June, 1901).

Where land has originally been let for non-agricultural purposes, but a part or the whole of it has afterwards been used or held for agricultural purposes, such whole or part, as the case may be, would, for the time that such whole or part has been so used or held, be deemed to be land within the meaning of this sub-section (*Dabi Das* v. *Toti*, S. D. B. R., No. 19 of 1892). Land included in the holding of a tenant, even if it may have been subsequently made use of, either with or without the consent of the landholder, for other purposes, is land let or held for agricultural purposes. (Report of the Select Committe, printed at page 49 of the N.-W. P. and O. Gazette, dated 22d June, 1901).

Holding for agricultural purposes does not include occupation, the main object of which is the dwelling house itself, and where the cultivation of the soil is entirely subordinate thereto (*Kalee Kishen Biswas* v. *Sreemutty Jankee*, 8 W. R., 250). Where the whole of land is appurtenant to an indigo factory, and part only is used for cultivation, the land was held to have been held for non-agricultural purposes (*Muhammad Ismael Khan* v. *Abdul Rashid Khan*, S. D. B. R., No. 4 of 1891). If the lease be for agricultural purposes, the mere existence of a hut upon the land would not convert it into a non-agricultural one (*Matunginee Dassee* v. *Haradun Doss*, 5 W. R., Act X, 60). If the principal matter demised under the lease is land, and indigo factories on such land are merely the adjuncts or appurtenances, it was held that a suit for arrears of rent would lie in the Revenue Court (*Sharoda Pershad Mookerjee* v. *Sreenath Mookerjee*, 15 W. R., 520). When the principal subject of the entire occupation was *bastu* (home-

stead) land, the residue, if any, of the holding being merely subordinate, the rent law was held not to be applicable ; but when the principal subject of the entire occupation was agricultural land, the building or buildings being mere accessories thereto, the rent law was held to be aplicable (*Chandessari* v. *Ghinah Pandey*, 24 W. R., 152).

An occupancy tenant building on a portion of a holding a shed for the accommodation of his cattle used for agricultural purposes and for the herd employed to take care of them, and a wall enclosing such shed, does not commit an act inconsistent with the purpose for which it was let (*Hemraj* v. *Dammar Singh*, W. N., 1888, p. 120). Land leased for the purpose of quarrying stone is not land let for agricultural purposes (*Shalgram* v. *Musammat Kubeerun*, 11 W. R., 400). Land let for planting trees thereon or for converting it into a grove or a flower garden is not land let for agricultural purposes (*Girwar Sahai* v. *Janki Prasad*, S. D. B. R., No. 3 of 1888 ; *Pundit Badri Prasad* v. *Bhim Sen*, S. D. B. R., No. 2 of 1892). Land let for horticultural purposes is not land within the meaning of this sub-section, though it was so under Act X of 1859. Where out of some plots of land one was used as a place where grass for thatching was grown and others were cultivated with kitchen vegetables, it was held that the land was not let for agricultural purposes (*Umrao* v. *Mahomed Rojabi*, I. L. R., 27 Calc., 205).

Under section 1, Act XII of 1881, land appurtenant to dwelling houses or manufactories, so long as such land was not let to agricultural tenants, was excluded from the operation of the said Act. But, under the present Act, no such restriction is imposed, the only restriction being that it must be let or held for agricultural purposes, without any regard to whether it is appurtenant to a dwelling house or manufactory or not.

Waste land :—Unsettled and unoccupied waste land, not being the property of any private owner, must be held to belong to the State (*Prosunno Coomar Roy* v. *The Secretary of State for India in Council*, I. L. R., 26 Calc., 803 ; 3 C. W. N., 725).

The Select Committee in their report on this sub-section, printed at p. 49 of the N.-W. P., and O. Gazette, dated 22d June, 1901, say :—

"The definition of the term 'land' as originally drafted has been carefully considered. It includes certain things, such as water used for irrigation and fisheries, which can only be described as 'land' for special reasons. The object in view in thus defining land was, as we understand it, to bring within the meaning of 'rent' all payments made by a tenant on account of land other than agricultural land, and on account of other rights, which can only be brought within the definition of 'land' by a forced interpretation of that term. Section 93 of Act XII of 1881 gets over the difficulty by declaring that a suit for the payment of rent on

account of such rights can be brought in the same way and in the same Court as a suit for arrears of rent in the ordinary sense of the term.

"The disadvantages of the method adopted in the Bill seem to us to outweigh the convenience it was designed to afford. It has, in the first place, led to much misapprehension, and though such misapprehension would have been removed by a more careful examination of other provisions of the Bill, it would be as well to avoid any danger of such misunderstandings. The omission of the saving clause in section 1 of Act XII of 1881, coupled with the reference to sites of buildings and to land let for purposes subservient to agriculture, has given rise to the mistaken idea that the Bill brings within the jurisdiction of Revenue Courts land occupied by dwelling houses and manufactories, *e.g.*, indigo factories. It has also been supposed [in spite of clause (*f*) of sec. 14 as it originally stood] that the creation of a right of occupancy in fisheries was contemplated by the Bill.

"If reference be made to the various sections in which the term 'land' occurs, it will be seen that it almost invariably refers to land included in the holding of a tenant. Now, such land, even if it may have been subsequently made use of, either with or without the consent of the landholder for other purposes, is land let or held for agricultural purposes. In confining, therefore, the term 'land' to land so let or held, as we propose to do, we are not practically making any change in the law as embodied in the Bill. We have, however, struck out the words 'for purposes subservient to agriculture' as vague and liable to misinterpretation. So far as such purposes are, in point of fact, subservient to agricultnre, they are, in our opinion, 'agricultural purposes,' and it is not desirable to extend the definition further. We have struck out the remainder of the definition, but have amended the definition of the term 'rent' so as to cover all payments on account of the various rights and uses referred to in the original definition of 'land.' 'Land' we define then to be solely 'land let or held for agricultural purposes.'"

(3) "Rent" means whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him, or on account of groves, tanks, rights of pasturage, or of gathering produce, forest-rights, fisheries, the use of water for irrigation, or the like :

See report of the Select Committee given under the preceding Sub-section.

'**Tenant**' :—See section 4 (5) and notes thereunder.

'**Land**' :—See section 4 (2) and notes thereunder.

'**Held**' :—See under Sec. 4 (2).

Rent in Kind :—Under Act XII of 1881 service rendered by a person for land held by him was held to be rent (*Dwarka Das* v. *Deoki Nandan*, W. N., 1882, p. 60), but it would not be so under this Act. For, 'rent,' as defined by this Act, means "whatever is, in cash or kind, to be paid or delivered by a tenant for land held by him ; and 'tenant' under this Act does not include a rent-free grantee [sec. 4 (5)] which includes a person who holds land on service-tenure [sec. 4 (8)]. Consequently, service rendered by a person for land held by him is not rent, as it is not rendered by a tenant. Nor can service rendered be said to be 'paid' or 'delivered.'

Rent :—The Select Committee in their report printed at p. 50 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"We have made the definition of 'rent' include (as we consider it does, as the term is usually understood,) payments made for groves, tanks (e. g., in which water-nuts are grown), and on account of rights of pasturage or of gathering produce, forest-rights, fisheries, and the use of water for irrigation. It is desirable that all claims to enforce demands on any such account should be brought in the Revenue Courts and in such Courts only. Sections 119 and 172 of the Bill (now secs. 102 and 167 of the Act) read with this definition secure this result."

The share of fruit or wood deliverable by the occupant of a grove of trees to the landholder is rent (*Pundit Badri Prasad* v. *Bhim Sen*, S. D. B. R., No. 2 of 1892). Periodical payment by a tenant of a defined portion of the produce of his grove to his landlord would be of the nature of rent given in kind (*Mahabir* v. *Sheodihal*, W. N , 1885, p. 320). A number of mangoes to be delivered yearly is rent (*Nabo Tarini Dasi* v. *Gray*, 11 W. R., 7). A suit for the landlord's share of the produce, or its money-value is a suit for rent (*Bhubo Sundari*, v. *Jynul Abdin*, 8 W. R., 393 ; *Luchmun Prasad* v. *Hoolas Mahtoon*, 11 W. R., 151 ; 2 B. L. R., App , 27 ; *Jamna Das* v. *Gausi Miah*, 21 W. R., 124 ; *Malik Amanat Ali* v. *Aklu Pasi*, 25 W. R., 140 ; *Tazudin Khan* v. *Ram Prasad Bhagat*, I. L. R., 1 All., 217). Collections of portions of the proceeds of sale from persons exposing their goods for sale in a *hát* are not rent because not paid or delivered for *land*. In *Robert Savi* v. *Issur Chunder Mundul*, (20 W. R., 146), it was held that a suit for rent derivable by a lessor from tolls collected by the lessee from persons resorting to a *hát*, is not a suit for rent. In *Bissorup Datt* v. *Binod Ram Sen*, (W. R , Sp. No., Act X, 93), it was held that a sum payable annually by a mortgagee in possession under a *zar-i-peshgi* lease executed by him in favour of the mortgagor is rent. But such a payment would not be rent under this Act, because it is not paid or delivered by a tenant, 'tenant' under this Act not including a mortagee of proprietary rights [Sec. 4 (5)]. Money

payable by a lessee in consideration of a lease granted, whether called *nuzzur* or *salamie*, cannot be looked upon as rent (*Dinonath Mookerjee* v. *Debnath Mullick*, 13 W. R., 307). Damages for the use and occupation of land are not rent (*Bhuban Mohan Basu* v. *Chandra Nath Banerji*, 17 W. R., 69 ; *Krishna Chopal Mawar* v. *Barnes*, I. L. R., 2 Calc., 374 ; *Kali Krishna Tagore* v. *Izzutunnisa*, 1 C. W. N., lxxviii) because not paid by a tenant. When a zemindari was sold, and the conditions of sale stipulated for the payment of a small pittance styled *dasturat*, by the purchaser as subsistence of the former *malik*, this was held not to be rent, because the relation of landholder and tenant did not exist between the parties (*Ram Churn Banerjee* v. *Torita Churn Paul*, 18 W. R., 343). Payment in cash or kind by a *thekadar* as *theka* money is rent, because paid by a tenant, 'tenant' under this Act including a *thekadar* [Sec. 4 (5)]. A suit by a landholder against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment, is one for rent and not for damages (*Basanta Kumari Debya* v. *Ashutosh Chuckerbutti*, I. L. R., 27 Calc., 67 ; 4 C. W. N., 3). In the above case the assignee was not a party to the assignment and it had not been accepted by him, which was regarded as showing that "in the contemplation of the parties the money did not cease to be a part of the rent or recoverable as such."

Where a lease was executed by the plaintiff in favour of the defendant at a fixed annual rent payable by instalments and the defendant, under instructions from the plaintiff, paid from time to time Government revenue, cesses, expenses of litigation, &c., on their behalf, and used to set off those sums against the rent due to them under the lease, it was held that after the expiry of the lease a suit by the plaintiffs against the defendant for an account was not maintainable ; the relation between the parties as created by the lease was simply that of landlord and tenant and the only relief which the plaintiffs could have properly asked for was a decree for rent, if any was still due (*Bhekdhari Lal* v. *Badhsingh Dudharia*, I. L. R., 27 Calc., 663). A suit brought by an assignee of arrears of rent after they fell due for the recovery of the amount due is a suit for rent (*Srish Chunder Bose* v. *Nachim Kazi*, I. L. R., 27 Calc., 827 ; 4 C. W. N., 357 ; *Mansar* v. *Loknath Rai*, 4 C. W. N., p. 10).

Abwabs :—It seems that *abwabs* are not included in the definition of rent. The Bill as originally drafted, printed at p. 20 of the N.-W. P. and O. Gazette, dated 17th November, 1900, contained the following definition of rent :—"Rent means whatever is, in cash or kind, to be paid or delivered by a tenant on account of his holding, use or occupation of land : and in secs. 35, 58, 67 and 73 and in Chapters VIII, IX and X, includes any sum recoverable under any enactment for the

time being in force as an arrear of rent." But the Select Committee omitted the last portion of the above definition with the following remarks :—"We have struck out the second paragraph in this clause in the Bill. So far as it would be consistent with any such enactment as is referred to, it is superfluous : if it adds to, or is in any way inconsistent with, any such enactment, the provisions of which it is not intended to repeal, it cannot stand. As drafted too it might involve consequences which do not appear to have been contemplated, e. g., the ejectment of a tenant from his holding for non-payment of sums recoverable as arrears of rent, but which do not constitute the rent payable for the holding."

This appears also from the language of sec. 56 of the N.-W. P. and Oudh Land Revenue Act, which shows that *abwabs* are not rent properly so called. Section 56 of the above Act runs as follows :—"In the North-Western Provinces all cesses which are payable by tenants on account of the occupation of land and which are of the nature of rent payable in addition to the rent of tenants, or in lieu of which proprietary rights may be assigned under sec. 78, clause (*b*), shall be recorded by the Record Officer under the appellations by which they are known, and no cesses not so recorded shall be recoverable in any Civil or Revenue Court."

The right to collect rent may be sold :—In *Mohesh Chunder Chatterjee* v. *Gooroo Pershad Roy*, (13 W.R., 401), it was held that for the purposes of Acts VIII and X of 1859, rent comes within the terms 'property' and 'moveable property,' and that, therefore, in execution of a decree for arrears of rent the judgment-debtor's right to recover rent from a sub-tenant may be sold.

But an application for the execution of a decree cannot be made by an assignee of the decree unless the assignor's interest in the land to which it relates has become and is vested in such assignee [sec 193 (i)].

'Paid or delivered' :—'Paid' refers to 'cash' and 'delivered' to 'kind.'

'Paid' includes payment made by the tenant or through his agent, or by postal money-order, or by deposit in Court under sec. 111 (see sec. 100).

'Or the like' :—Such as *patua*, *moonj*, *sarpat* &c.

(4) "Pay," with its grammatical variations and cognate expressions, when used with reference to rent, includes "deliver" with its grammatical variations and cognate expressions :

See notes on 'Paid or delivered' under Sub-section (3).

(5) "Landholder" means the person to whom, and "tenant" the person by whom, rent is, or but for a contract, express or implied, would be payable ;

and "tenant" includes a thekadar, but does not include a mortgagee of proprietary rights, or a rent-free grantee :

How the relation of landholder and tenant is created :— According to Mr. Field in his "Rent Law Digest," Art. 4, p.5, the relation of landlord and tenant comes into existence "(1) where it has been created by a contract valid according to the law in force at the time of executing such contract ; (2) where it is reasonably implied from the acts of the parties ; and (3) where it has been created or continued by operation of law."

A tenancy created by a contract arises when a person agrees to receive land from another in consideration of his paying rent to such other for the use and occupation of the land. This is done by means of leases, whether oral or written.

An implied contract of tenancy arises where a person occupies the land of a person without his consent and is allowed to remain in cultivatory occupation of the land and treated as a tenant. Such an occupant is, in fact, a trespasser, but under sec. 34 he will be liable to pay rent. If his liability to pay rent is admitted by the landholder or the landholder demands or accepts rent from him or sues him for rent, the relation of landholder and tenant at once springs up between the parties. In *Cazee Syud Mahomed Azmul* v. *Chundee Lall Pande*, (7 W. R., 250), and *Gudadhur Banerjee* v. *Khettur Mohun Surmah*, (7 W. R., 460), it was held that a landlord, by taking rent from a party and suing him for arrears of rent, acknowledges him as a tenant. In *Nityanand Ghosh* v. *Krishna Kishor*, (W. R., Sp. No., Act X, 82), it was said :—"We think that, though by the law of landlord and tenant, as applied in England, a person who takes and cultivates the lands of another (there being no express permission to cultivate on the side of the landlord, nor any express condition to pay rent on the part of the cultivator) would not be allowed to be regarded as a tenant, but treated as a mere trespasser, the peculiar circumstances of this country preclude the applicability of the technical doctrine of the English law of landlord and tenant to such a case. Here it is a very useful thing for a man to squat on a piece of land, or to take into cultivation an unoccupied or waste piece of land. Tenancy in a great many districts in Bengal commences in this way, and where it does so commence, it is

presumed that the cultivator cultivates by the permission of the landlord, and is under obligation to his landlord to pay him a fair rent, when the latter may choose to demand it. Thus, the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser, but as a tenant, and he would be so, although he may never have acknowledged the landlord's right or entered into any express contract with him for payment of rent. If he chooses to cultivate the zamindar's land and the zamindar lets him, there is an implied contract between them, creating a relationship of landlord and tenant." In *Surnomoyee* v. *Denonath Gir Sunnyasee*, (I. L. R., 9 Calc., 908), it was held that though the defendants were trespassers, but as the plaintiff elected to waive the trespass, the defendants might be treated as tenants, and a decree for use and occupation given against them.

Tenancies come into existence by operation of law when a proprietor whose proprietary rights in a *mahal* are transferred becomes an ex-proprietary tenant of his *sir* land and of the land which he has cultivated continuously for twelve years at the date of the transfer (sec. 10). Where in resumption proceedings a decree for resumption is given, the rent-free grantee becomes from the date of such decree a tenant of the decree-holder and the legal relation of landholder and tenant arises between them (*Huro Pershad Chowdhry*, v. *Shama Pershad Roy Chowdhry*, 6 W. R., Act X, 107), though before such resumption the rent-free grantee could not be called a tenant [Sec. 4 (5)]. So also a tenancy by operation of law is created when an occupancy tenant dies and his heirs succeed him in the tenancy, the relation of landholder and tenant arising between such heirs and the landholder by the operation of the law of inheritance.

Payment of rent not necessary to establish or maintain a tenancy :—Under this sub-section a tenant is a person by whom rent is, or but for a contract, express or implied, would be payable. Whether rent is actually paid or not, does not at all affect a person's position as a tenant : he would be a tenant all the same even though rent is not actually paid by him. It is only his liability to pay rent that would consititute him to be a tenant. In the following cases it was decided that mere non-payment of rent did not determine the relation of landholder and tenant (*Rungo Lal Mundul* v. *Abdool Guffoor*, I. L. R., 4 Calc., 314 ; 3 C. L. R., 119 ; *Poresh Narain Roy* v. *Kassi Chunder Talukdar*, I. L. R., 4 Calc., 661 ; *Musyatulla* v. *Noorzahan*, I. L. R., 9 Calc., 808 ; *Dadoba* v. *Krishna*, I. L. R., 7 Bom., 34 ; *Rambhat* v. *Bá Bá Bhat*, I. L. R., 18 Bom., 250 ; *Brojendro Kumar Roy*

Chowdhry v. *Bungo Chunder Mundul*, 12 C. L. R., 389 ; *Prem Sukhdas* v. *Bhupia*, I. L. R., 2 All., 517 ; *Mazhar Rai* v. *Ramgat Singh*, I. L. R., 18 All., 290 ; W. N., 1896, p. 56). Non-payment of rent will not relieve an occupancy tenant of his status of tenant so as to give him a title to the land (*Poresh Narain Rai* v. *Kashi Chandra Talukdar*, I. L. R., 4 Calc., 661).

Mr. Justice Rampini in his note on "landlord" in the Bengal Tenancy Act says :—"Any person to whom rent is payable is a landlord in relation to the person who pays rent to him, though he may himself be a tenant in relation to some third person." A landholder, therefore, is not necessarily the actual proprietor, nor is a tenant necessarily the tenant-in-chief. Many proprietors are not landholders within the meaning of "landholder" as given in this sub-section, while many landholders within its definition may not be proprietors. Thus, if a proprietor have mortgaged his proprietary rights, the mortgagee in possession and not the proprietor is the landholder ((*Lakhraj Singh* v. *Kalka Singh*, 1 L. R., R. R. S., 211).

That a "landholder" within the definition of this sub-section is not necessarily the proprietor and that a person to whom rent is payable is a landholder in relation to the person who pays rent to him, though he may himself be a tenant in relation to some third person is clear from the wordings in several places of this Act. For instance, in secs. 4 (12) (*g*), 10, 17 and 89 (2) the word "proprietor" is used and not the word "landholder." Elsewhere the word generally used is "landholder." In some places, *e. g.*, in secs. 24, 26, 79, 80, 90 and 94 the words "his landholder" are used in relation to a tenant, which show that the landholder of a tenant may himself be a tenant in relation to some third person. See also sec. 51 (5).

That the word "tenant" does not necessarily mean the "tenant-in-chief" or the tenant of the proprietor landholder is also apparent from the language of section 66 in which the words "if the tenant is not a sub-tenant" occur, which show that the sub-tenant of a landholder may also be the tenant of some third person. See full discussion under sec. 66.

Illustrations.

(1) A is entitled to receive rent from B. B is therefore A's tenant.

(2) A is entitled to receive rent from B. B is entitled to receive rent from C. B is therefore A's tenant, but he occupies the position of a landholder in relation to C.

(3) A is entitled to receive rent from B. B is entitled to receive rent from C. C, in his turn, is entitled to receive rent from D. B is

therefore A's tenant, but he is a landholder in relation to C ; C is a tenant of B, but he is a landholder in relation to D.

A person cannot be his own tenant (*Ishri Singh* v. *Rupnath*, W. N., 1883, p. 86). The mere fact that the person to whom the tenant for some years paid rent had no title, cannot take away from him the character of ryot, or prevent him from counting those years in the time necessary to give him a right of occupancy (*Syud Ameer Hossein* v. *Sheo Suhae*, 19 W. R., 338). A person who stands surety for payment of rent by a tenant is not a tenant (*Bhugwan Chunder Roy Chowdhri* v. *Manick Bibi*, I. L. R., 9 Calc., 383).

See also notes on "Who can and who cannot acquire occupancy rights" under sec. 11.

'Thekadar' :—see sub-section (6).

'Mortgagee of proprietary rights' :—"These words refer to the *Zar-i peshgi* lease-holder. It is now settled law that such a lease-holder is in effect a mortgagee, and it is therefore sufficient to exclude mortgagees generally from the definition of a 'tenant'." (Report of the Select Committee printed at p. 50 of the N.-W. P. and O. Gazette, dated 22d June, 1901).

'Rent-free grantee' :—see sub-section (8).

(6) "Thekadar" includes a farmer, or other lessee of proprietary rights :

As under sub-section (5) 'tenant' includes a thekadar and under this sub-section 'thekadar' includes a farmer or other lessee of proprietary rights, so where the legislature intended to exclude a thekadar, farmer, or other lessee of proprietary rights from the meaning of 'tenant,' it has expressly done so. See sections 4 (7), 11, 20 (3), 22, 23, 24 to 30, 47, 50, 53 and 54. In other places in this Act 'tenant' includes a thekadar, a farmer, or other lessee of proprietary rights.

'Other lessee of proprietary rights' :—A thekadar properly so called may not be a lessee of proprietary rights. It is therefore that a lessee of proprietary rights has been included in the definition of 'thekadar.'

A thekadar is ordinarily a person who holds a theka or lease of the whole of a zemindar's interest in a village (*Leela Dhur* v. *Bhugwunt*, 3 N.-W. P., 39).

(7) "Sub-tenant" means a tenant who holds land from a person possessing therein only the interest of a tenant, other than a permanent tenure-holder, or a thekadar :

See notes under sub-section (5).

See also notes on 'sub-lessee' under sec. 64 (1).

Illustration.

A is entitled to receive rent from B who is a fixed-rate, ex-proprietary, occupancy, or non-occupancy tenant. B is entitled to receive rent from C. C is entitled to receive rent from D. C is therefore a sub-tenant of A. D is also a sub-tenant of B. But D is not a sub-tenant of A, though he may be called A's sub-lessee.

A sub-tenant is always a non-occupancy tenant, as he cannot acquire occupancy rights (see sec. 11 and notes under sec. 19).

The Select Committee in their report printed at p. 50 of the N.-W. P. and O. Gazette dated 22d June, 1901, say :—"Tenants holding under permanent tenure-holders, or thekadars, are tenants holding land from a tenant as defined above, but nevertheless are not 'sub-tenants'."

(8) "Rent-free grantee" includes a person who holds land on service tenure :

For 'resumption of rent-free grants' see Chapter X.

(9) "Holding" means a parcel or parcels of land held under one tenure or one lease or engagement.

(10) "Agricultural year" means the year commencing on the first day of July and ending on the thirtieth day of June.

Wherever the word 'year' and not 'agricultural year' is used in this Act it would mean "a year reckoned according to the British Calendar." [N.-W. P. and Oudh General Clauses Act I of 1887, sec. 2 (24)].

(11) "Registered" includes attested under the provisions of section 97.

"Registered shall mean registered under the law for the time being in force for the registration of documents" [N.-W. P. and Oudh General Clauses Act I of 1887, sec. 2 (30)]. Documents whose registration is compulsory under the Indian Registration Act III of 1877, must be registered under that Act, while documents whose registration is optional under the said Act may be registered under that Act, or they may be attested under the provisions of sec. 97. In *Laik Singh* v. *Karam Singh*, (S. D. B. R., No. 2 of 1883), it was held that a written engagement of which the registration would be compulsory under the Registration Act must be registered under the terms of sec. 12 (*a*), Act XII of 1881, while an engagement of which the registration under the

Registration Act would be optional may be recorded before a *kanungo* under sec. 12 (*a*), Act XII of 1881.

Registration of instruments of sale, mortgage, or gift :— Under sec. 17 (b), Act III of 1877, and secs. 54 and 59 of Act IV of 1882, instruments of sale or mortgage of immoveable property of the value of one hundred rupees and upwards must be registered. In the case of tangible inmoveable property of a value less than one hundred rupees, a sale may be made either by a registered instrument or by delivery of the property (sec. 54, Act IV of 1882). Where the principal money secured is less than one hundred rupee s, a mortgage may be effected either by an instrument signed by the mortgagor, and attested by at least two witnesses, or (except in the case of a simple mortgage) by delivery of the property (sec. 59, Act IV of 1882). Instruments of gift of immoveable property must be registered (sec. 17, Act III of 1877, and sec. 123, Act IV of 1882). Registration of a sale deed constitutes a sufficient delivery of the deed to pass the interest in land contained therein (*Ponnaya Goundan* v. *Muttu Goundan*, I. L. R., 17 Mad., 146). All non-testamentary documents duly registered under the Registration Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession (sec. 48, Act III of 1877). But notwithstanding the provisions of sec. 48 of the Registration Act, a person who purchases even under a registered deed of sale, with notice of a prior agreement for sale of the same property, will not be allowed to retain the property as against the person claiming under the prior agreement, and a suit for specific performance of the oral contract can be successfully brought notwithstanding the subsequent registered sale deed (*Nemai Charan Dhabal* v. *Kokil Bag*, I. L. R., 6 Calc., 534 ; 7 C. L. R., 487 ; *Chunder Nath Roy* v. *Bhoyrub Chunder Surma Roy*, I. L. R., 10 Calc., 250 ; *Chunder Kant Roy* v. *Krishna Sunder Roy*, I. L. R., 10 Calc., 710 ; *Kannan* v. *Krishnan*, I. L. R., 13 Mad., 324.)

Leases and their registration :—The word 'lease' has not been defined in this Act ; but in the Registration Act III of 1877, lease is said to "include a counter-part, kabuliyat, and undertaking to cultivate or occupy and an agreement to lease." In sec. 105 of the Transfer of Property Act IV of 1882 a lease of immoveable property is said to be "a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically, or on specified occasions, to the transferor by the transferee, who accepts the transfer on such terms." In Act

II of 1899 'lease' has been defined as meaning "a lease of immoveable property" and as including also "(*a*) a patta, (*b*) a kabuliyat or other undertaking in writing, not being a counter-part of a lease, to cultivate, occupy, or pay or deliver rent for immoveable property, (*c*) any instrument by which tolls of any description are let, and (*d*) any writing on an application for a lease intended to signify that the application is granted." It is not necessary that leases should always be in writing. Parol leases are also valid in many cases.

A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument (Sec. 17, Act III of 1877 and sec. 107, Act IV of 1882). But the Local Government may, by order published in the official Gazette, exempt from the operation of the above provision any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees (Proviso to sec. 17, Act III of 1877). Leases of immoveable property for any term not exceeding one year and leases exempted under sec. 17 of the Registration Act may be made either by a registered instrument or by oral agreement [Sec. 18 (*c*), Act III of 1877 and sec. 107, Act IV of 1882].

Leases held to require registration :—Where the form of a *patta* is expressed by the words *san-ba-san*, a year by year tenancy is meant, that is, a tenancy which is certain for the period of one year and will continue beyond that period until it is properly put an end to by either party, and, unless registered, it cannot be received as evidence (*Ram Coomar Mundul* v. *Brojohuree Mirdha*, 10 W. R., 410). Where a kabuliyat for one year contains a provision extending its term to more than that period, it cannot be admitted in evidence without registration (*Kisto Kalee Moonshee* v. *Agemona Bewa*, 15 W. R., 170). A lease for more than a year is not the less a lease because a condition is attached to the consideration, and because its term may be lessened on the payment of a sum of money by the lessor ; such a lease cannot be used in evidence unless it is registered (*Buksh Ali Boohean* v. *Sreemutty Nubotara*, 13 W. R., 468). A lease of immoveable property for the life of a lessee is a lease for a term exceeding one year and therefore requires registration (*Parshotam Vishnu* v. *Nana Prayag*, I. L. R., 18 Bom., 109). A *patta* for one Fasli to remain in force until another *patta* is granted is a lease for a term exceeding one year and not a lease for a year, and therefore requires registration (*Venkatachellam Chetti* v. *Audian*, I. L. R., 3 Mad., 358). Where a *zar-i-peshgi* lease was granted for one year, but with a stipulation that unless the loan were repaid within that time it should continue in force, it was held that such a lease was one for a

term exceeding one year of which registration was compulsory (*Bhobani Mahto* v. *Shibnathpara*, I. L. R., 13 Calc., 113). An agreement for a lease for four years needs registration if the parties to such agreement intend to create a present demise, although the agreement may contemplate a formal document being subsequently executed (*Purmanund Das Jiwandas* v. *Dharsey Virji*, I. L. R., 10 Bom., 101).

Leases held not to require registration :—A kabuliyat in which a ryot agreed to hold land under a *patta* for a specified year, the agreement between the parties being that at the close of that period a fresh settlement would be made, was held to be a lease for one year, and not to need registration, although a clause intervened between the above clauses to the effect that year by year the ryot would pay rent at the above rate (*Jugdesh Chunder Biswas* v. *Abedollah Mundul*, 14 W. R., 68). A lease for one year, containing an option of renewal for a further period of one year, is not a lease for a term exceeding one year so as to render its registration compulsory (*Boyd* v. *Kreig*, I. L. R., 17 Calc., 548). A lease for one year certain, containing an expression, on the tenant's part, of readiness to hold the land longer at the same rent if the landlord should desire it, is a lease for a term not exceeding one year and does not require to be registered (*Apu Budgavada* v. *Narhari Annajee*, I. L. R., 3 Bom., 21 ; *Jugjivandas Jawaherdas* v. *Narayan Lakshman Patil*, I. L. R., 8 Bom., 493 ; *Southo Pursad Dass* v. *Rughoo Padhan*, 26 W. R., 98). An agreement for a lease does not require registration (*Bhairab Nath Khettre* v. *Kishori Mohan Shaha*, 3 B. L. R., App. 1). An agreement varying the terms of a lease does not operate as a lease and its registration is not necessary (*Satoyesh Chunder Sircar* v. *Dhunpul Singh*, I. L. R., 24 Calc., 20). A document given by the owner of land to his tenant, varying the terms of the tenancy with reference to the amount of rent to be paid, is not an instrument relating to an interest in immoveable property and does not require registration (*Obai Goundan* v. *Ramalinga Ayyar*, I. L. R., 22 Mad., 217). Leases creating merely rights of tenants-at-will do not require registration (*Khuda Bakhsh* v. *Sheo Din*, I. L. R., 8 All., 405 ; *Jivraj Gopal* v. *Atmaram Dayaram*, I. L. R., 14 Bom., 319).

Effect of non-registration of documents whose registration is compulsory :—No document required by sec. 17 of the Registration Act to be registered shall affect any immoveable property comprised therein, or be received as evidence of any transaction affecting such property unless it has been duly registered (sec. 49, Act III of 1877). S gave M a lease of certain land, which was required by law to be registered, but which was not registered, in which it was stipulated that, if he failed to deliver any portion of such land, he should

pay damages at a certain rate per bigha in respect of the portion not delivered, and in which such land was hypothecated as security for the payment of such damages. S having failed to deliver a portion of such land, M sued him for damages in respect of such portion according to the terms of the lease, not seeking to enforce the hypothecation, as the lease was not registered, but seeking only a money decree. *Held* that the lease being unregistered, could not be received as evidence even of S's personal liability thereunder (*Martin* v. *Sheo Ram Lal*, I. L. R., 4 All., 232). In a suit for rent where the defendant admitted the plaintiff's right as landlord and did not dispute the correctness of the rent but pleaded payment, the non-registration of the kabuliyat filed by the plaintiff was held to be no ground for dismissing the suit which could have proceeded whether the kabuliyat was or was not produced, the time for raising the objection as to non-registration being only when the kabuliyat was tendered in evidence upon any disputed point (*Syud Reza Ali* v. *Bhikun Khan*, 7 W. R., 334). Where the contract between the parties to a rent suit is in no way disputed or denied, and the fact of certain lands having been taken at a certain rent is admitted, the only issue being whether the rent has been paid or not, the case may be tried notwithstanding that the kabuliyat is inadmissible by reason of non-registration (*Dinonath Mookerjee* v. *Debnath Mullick*, 14 W. R., 429.) An unregistered document when followed up by delivery of possession, may be used as evidence of that possession (*Lalla Gopee Chand* v. *Shaikh Liakut Hossein*, 25 W. R., 211). If a contract of lease is, for want of registration, ineffectual, the landlord is not debarred from giving other evidence of a tenancy and requiring the Court to adjudicate on his right to eject (*Venkatagiri* v. *Raghava*, I. L. R., 9 Mad., 142). An unregistered document requiring registration as affecting an interest in land is admissible in evidence for any purpose for which registration is unneccssary (*Lachmipat Singh Dugar* v. *Khairat Ali*, 12 W. R., F. B., 11 ; *Khushalo* v. *Behari Lal*, I. L. R., 3 All., 523 ; *Shib Pershad Doss* v. *Unnopoorna Dayee*, 12 W. R., 435 ; 3 B. L. R., A. C., 451 ; *Ulfatunnissa* v. *Hosain Khan*, I. L. R., 9 Calc., 520 ; *Antaji* v. *Dattaji*, I. L. R., 9 Bom., 36 ; *Subramaniam* v. *Perumal Reddi*, I. L. R., 18 Mad., 454 ; *Vani* v. *Bani*, I. L. R., 20 Bom., 553 ; *Sheo Dial* v. *Prag Dat Misr*, I. L. R., 3 All. 229 ; *Lachman Singh* v. *Kesri*, I. L. R., 4 All., 3). But where an unregistered deed is in its terms indivisible and discloses one transaction only, it is inadmissible in evidence to prove a fact for which registration is unnecessary (*Mattongeney Dossee* v. *Ramnarain Sadkhan*, I. L. R., 4 Calc., 83 ; *Gurunath Shrinivas Desai* v. *Chenbasappa*, I. L. R., 18 Bom., 745). A parol statement made to prove the contents of an unregistered documen ,

of which registration is compulsory, is inadmissible in evidence (*Kinlock* v. *Thakur Dass*, S. D. B. R., No. 13 of 1885). When the terms of an agreement to lease have been reduced to writing and the instrument is inadmissible in evidence through neglect to register, secondary evidence of its contents may not be given (*Ajudhia Parshad* v. *Bhagwan Din*, 2 L. R., R. R. S., 31).

Priority of registered over unregistered instruments :— Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of sec. 17, and clauses (a) and (b) of sec. 18 of the Registration Act shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not. But the above provisions do not apply to leases exempted under the proviso to sec. 17 of the Registration Act (sec. 50, Act III of 1877). Where property has been mortgaged by a deed, the registration of which is not compulsory, a subsequent purchaser of the property who has duly registered his purchase-deed, but who has bought with notice of the unregistered mortgage, takes the property subject to that mortgage (*Abool Hossein* v. *Raghu Nath Sahu*, I. L. R., 13 Calc., 70). Section 50 of the Indian Registration Act, 1877, will not avail to give the holder of a subsequent registered deed priority in respect of his deed over the holder of an earlier unregistered deed, not being a compulsorily registrable deed, if in fact the holder of the registered deed has, at the time of its execution, notice of the earlier unregistered deed (*Diwan Singh* v. *Jadho Singh*, I. L. R., 19 All., 145 ; W. N., 1897, p. 19 ; *Hathi Sing Sobhai* v. *Kuvarji Javher*, I. L. R., 10 Bom., 105 ; *Krishnamma* v. *Suranna*, I. L. R., 16 Mad., 148 ; *Ram Autar* v. *Dhanauri*, I. L. R., 8 All., 540).

(12) "Improvement" means, with reference to a tenant's holding, any work which adds materially to the letting value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is after execution made directly beneficial to it : and, subject to the foregoing provisions, includes—

(*a*) the construction of tanks, wells, water channels, and other works for the storage,

supply, or distribution of water for agricultural purposes ;

(*b*) the construction of works for the drainage of land, or for the protection of land from floods, or from erosion or other damage by water ;

(*c*) the planting of trees, and the reclaiming, clearing, enclosing, levelling, or terracing of land ;

(*d*) the erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village site, required for the convenient or profitable use or occupation of the holding ; and

(*e*) the renewal or reconstruction of any of the foregoing works or alterations therein or additions thereto :

but does not include—

(*f*) such temporary wells, water channels, embankments, levellings, enclosures, or other works, or petty alterations or repairs to such works, as are made by tenants in the ordinary course of cultivation : or

(*g*) unless made with the written consent of the proprietor of the land, any work that substantially diminishes the value of any other land belonging to the proprietor :

The definition of "improvement" as given in this Act is much more exhaustive than that given in Act XII of 1881. The definition has been taken partly from the Bengal Tenancy Act and partly from the Punjab Tenancy Act.

This sub-section does not say by whom the improvement must be made, but on reference to sec. 90 it appears that only a tenant or his

successor in the tenancy [sec. 4 (1)] is entitled to claim compensation for improvement. An ex-proprietary tenant, therefore, cannot claim compensation for an improvement executed by him on his ex-proprietary holding before he became an ex-proprietary tenant.

'Work':—It seems that partly executed works are not within the scope of this section. The work must have reached a complete stage.

'Adds materially to the letting value':—This does not mean a work by which the produce of the holding is increased, unless where increase in the produce affects the letting value of the holding. Increase in the letting value should not be insignificant.

'Suitable to the holding':—If, for instance, a holding consists of five bighas of land and the tenant excavates a pucca tank of two bighas at a cost of two thousand rupees to irrigate his holding, it could hardly be said that the improvement is suitable to the holding.

'Consistent with the purpose for which it was let':—See notes on "Agricultural purposes" under sec. 4, sub-section (2).

As to in what cases a tenant will be entitled to compensation see sec. 90.

As to how the amount of compensation for an improvement will be estimated see sec. 91.

As to the compensation payable when the improvement benefits both the land from which the tenant is to be ejected and other land in his occupation see sec. 92.

Clause (a):—Wells or tanks excavated for the supply of water for drinking purposes, or simply for the sake of recreation or ornamentation, or for religious purposes, or in commemoration of the memory of a person are not within the meaning of this clause.

The original Bill as printed in the N.-W. P. & O. Gazette, dated 17th November, 1900, contained also the words "or for the use of men and cattle employed in agriculture" at the end of this clause. But these words were omitted in the second draft Bill printed in the N.-W. P. and O. Gazette, dated 22nd June, 1901, and the Select Committee gave the following reasons for omitting them :—"In sub-clause (*a*) we have struck out the words 'for the use of men and cattle employed in agriculture'. We consider that the term 'improvement' should be confined to improvements of the actual holding of the tenant; it is difficult to conceive a case in which any such structures would add materially to the letting value of the holding, and we fear that such a provision would lead to much unnecessary litigation."

Clause (c):—

'Trees':—Under Act XII of 1881, 'improvement' did not include planting of trees.

No tenant, except a permanent tenure-holder or a fixed-rate tenant, can, without the written consent of the landholder, plant trees (sec. 88).

Planting trees here and there, and nourishing those of spontaneous growth is not an improvement (C. J., No. 18, P. R., 1874).

'**Reclaiming**' :—means turning into a culturable condition land which, at the time of reclaiming, is not fit for cultivation. For instance, turning marshy or waste land into a culturable condition would be a reclaiming of such land. But merely bringing pasture lands under cultivation is not an improvement (C. J., No. 18, P. R., 1874).

'**Clearing**' :—It is a fair presumtion not of law, but of fact, that a tenant who clears waste land and brings it under cultivation improves it (C. J., No. 31, P. R., 1879).

Clause (d) :—Building houses for the occupation of agricultural tenants, if the annual letting value of the land is thereby increased, is an improvement (C. J., No. 56, P. R., 1880).

Clause (g) :—The Select Committee in their report printed at p. 51 of the N.-W. P. and Oudh Gazette, dated 22nd June, 1901, say :—"In sub-clause (*g*) we have inserted the words 'unless made with the written consent of the proprietor.' It would be unjust to allow a proprietor, who has consented to an improvement being made, to refuse compensation on the ground that it has diminished the value of other property belonging to him. He must be presumed in such a case to have taken the risk of injury to some of his property, in the expectation of counterbalancing improvement to the rest of it."

'**Written consent**' :—Mere acquiescence, or even actual assistance given by the proprietor to the tenant in the improvement made by him would not be sufficient.

'**Substantially diminishes the value of any other land belonging to the proprietor**' :—In deciding the question whether diminution in value has taken place, two things, among others, will have to be principally taken into consideration. (1) It must be found whether the land in the value of which diminution has been caused belongs to the proprietor of the land on which the tenant makes the improvement ; and (2) the total market value of both the lands in question before any improvement was made and diminution in value caused, will have to be compared with the total market value of both the lands after the improvement was made and diminution in value caused.

It may be noted that the words 'value' and 'proprietor' have been used in this clause. They have been purposely used to distinguish them from 'letting value' and 'landholder.' For the distinction between 'proprietor' and 'landholder' see notes on sub-section (5).

See secs. 88 to 94 in connection with this clause.

(13) "Board", "Revenue Court", "Revenue Officer", "Settlement Officer", "Assistant Collector", "Tahsildar", "revenue", "mahál", "sir", "lambardar", and "minor" have the same meaning respectively as in the North-Western Provinces and Oudh Land Revenue Act, 1901.

N.-W. P. & O. III of 1901.

'**Board**' :—means the Board of Revenue [sec. 4 (1) of the N.-W. P. and Oudh Land Revenue Act].

'**Revenue Court**' :—means all or any of the following authorities (that is to say), the Board and all members thereof, Commissioners, Additional Commissioners, Collectors, Assistant Collectors, Settlement Officers, Assistant Settlement Officers, Record Officers and Assistant Record Officers and Tahsildars [sec. 4 (8), N.-W. P. and Oudh Land Revenue Act].

'**Revenue Officer**' :—means any officer employed under the N.-W. P. and Oudh Land Revenue Act in maintaining revenue records, or in the business of the land revenue [sec. 4 (9), N.-W. P. and Oudh Land Revenue Act].

'**Settlement Officer**':—See sec. 60 of the N.-W. P. and Oudh Land Revenue Act.

'**Assistant Collector**' :—See sec. 15 of the N.-W. P. and Oudh Land Revenue Act.

'**Tahsildar**':—see Sec. 17 of the N.-W. P. and Oudh Land Revenue Act.

'**Revenue**':—means land revenue [sec. 4 (7), N.-W. P. and Oudh Land Revenue Act].

'**Mahal**':—is thus defined in Sec. 4 (4) of the N.-W. P. and Oudh Land Revenue Act :—

Mahál means—

(*a*) any local area held under a separate engagement for the payment of the land revenue : provided that—

(i) if such area consists of a single village or portion of a village, a separate record of rights has been framed for such village or portion ;

(ii) if such area consists of two or more villages or portions of villages, a separate record of rights has been framed either for the entire area, or for each of the villages or portions of villages included therein ;

(*b*) any revenue-free area for which a separate record of rights has been framed ;

(*c*) for such purposes as the Local Government may determine, any grant of land made heretofore or hereafter under the waste land rules ; and

(*d*) any other local area which the Local Government may, by general or special order, declare to be a mahál.

'Sir':—'Sir' is thus defined in sec. 4 (12) of the N.-W. P. and Oudh Land Revenue Act :—

"Sir" means in the North-Western Provinces—

(*a*) Land recorded as sir in the last record of rights framed before the commencement of this Act and continuously so recorded since, or which but for error or omission would have been so continuously recorded ; or

(*b*) land cultivated continuously for twelve years immediately before the commencement of this Act by the proprietor himself with his own stock, or by his servants, or by hired labour ; or

(*c*) land recognized by village custom as the special holding of a co-sharer, and treated as such in the distribution of profits or charges among the co-sharers :

Provided that land which is sír under sub-clauses (*a*), (*b*) or (*c*) shall cease to be sir when it becomes the subject of an ex-proprietary tenancy :

Provided also that if an ex-proprietary tenant regains his proprietary right in the land held by him as ex-proprietary tenant, the land mentioned in the first proviso shall again become his sír.

NOTES ON "SIR."

Clause (a) :—

'Recorded as Sir':—These words must be construed to mean "recorded as sír was wont to be recorded" at the last settlement ; it is not essential that the word "sír" be expressly used in the settlement record (*Lalla Kunwar* v. *Racha Singh*, 1 L. R., R. R. S., 108 ; *Kashi Ahir* v. *Lala Jagmohan Lal*, referred to in *Bharosa Pandey* v. *Baboo Khewal Singh*, 2 L. R., R. R. S., p. 25, at p. 27).

'Last record of rights':—that is, record of rights prepared under Act XIX of 1873 according to the rules made by the Board of Revenue.

'Framed before the commencement of this Act':—Land recorded as sír in a record of rights which is in the course of preparation and is not completed at the time when the N.-W. P. and Oudh Land Revenue Act comes into force, cannot be regarded as sir within the meaning of this clause. In *Haridas* v. *Ghansham Narain*, (I. L. R., 6 All., 286), it was held that land recorded as sir during the progress of the settlement of a district in which it is situate is not 'Sir land' as defined in sec. 3 (4) (*a*) of Act XVIII of 1873, and that such land

does not become 'Sir land' within the meaning of that definition until the settlement is closed and confirmed.

'Error or omission':—These words do not refer to error or omission made in the original entries of the last record of rights framed before the commencement of the N.-W. P. and Oudh Land Revenue Act, but to such error or omission which has been made in the last record of rights after they were framed, and, had it not been for such error or omission, the entries in the last record of rights would have been continously recorded as they had originally been.

Clause (b):—This clause corresponds to sec. 3 (4) (*b*) of Act XII of 1881.

'Twelve years.'—That is, full twelve years. See notes on this head under sec. 11.

'Continuously':—Cultivation of land (*e. g.*, of land which partakes of the nature of a Jhil or is Kachhar or alluvial land) whenever it is capable of cultivation is continuous within the meaning of this clause (*Dwarka Prasad* v. *Behari Lal*, W. N., 1886, p. 219; *Lachman Prasad* v. *Bal Singh*, I. L. R., 4 All., 157).

'Proprietor':—It would be a question whether the twelve years' cultivation must be by the same proprietor or that cultivation for twelve years by different proprietors into whose hands the land has changed ownership will also be sufficient for the purposes of this clause. For instance, if A as proprietor cultivated land for ten years and afterwards sold it to B who continued to cultivate it for two years, would the land become the *sir* of B after these two years of cultivation by B? It seems that such land would not become the *sir* of B, because by purchase he gets only the land and does not acquire thereby the *khudkasht* right which A had over the land.

Clause (c):—This clause is the same as sec. 3 (4) (*c*) of Act XII of 1881, with this difference that in place of the word "or" between "co-sharer" and "treated" the word "and" has now been substituted, necessitating thereby the co-existence of both the conditions mentioned in this clause.

Sir rights are inheritable but are not transferable:—Sir rights are inheritable. But *sir* rights cannot be acquired by a transferee of sir land whether the transferor remains or does not remain in cultivating possession of it (*Ram Jas Singh* v. *Sheo Shankar Singh*, S.D.B.R., No. 2 of 1900.)

Proviso 1:—

'When it becomes the subject of an ex-proprietary tenancy':—*i. e.*, when the proprietary rights in a mahal or the sír land itself is transferred, for under sec. 10 ex-proprietary-tenant rights will

arise immediately on such transfer, irrespective of whether the transferor remains in cultivating possession of the sír land or not. In *Ramjas* v. *Sheo Shankar, Singh*, (S. D. B. R., No. 2 of 1900), it was held that whenever a person "loses or parts with his proprietary rights in any mahal" within the meaning of sec. 7, Act XII of 1881, the land held by him as sir at the date of such loss or parting ceases *ipso facto* to be sir; and it was also held that sir transferred by sale ceases to be sir from the date of the sale, whether the vendor remains or does not remain in cultivating possession of it. But in *Nathu Ram* v. *Bhawani Das*, (S. D. B. R., No. 10 of 1885), the plaintiff, Nathu Ram, purchased the rights and interests of Jiwan Singh and Khub Singh in the mahal in question. The land, the subject of the application was then sir, and as the vendors asserted no right to continue in occupation of it as ex-proprietary tenants, the vendee continued to hold it as sír. It was held that the land was still sir But this ruling being contrary to what is laid down in this proviso is of no application under the existing law.

There is nothing in the law to prevent a zamindar from relinquishing his rights in sir land and converting it into land held by ordinary tenants (*Harpal Singh* v. *Bal Gobind*, I. L. R., 7 All., 586.)

Proviso 2 :—

'**Held by him as an ex-proprietary tenant**' :—When an ex-proprietary tenant loses his ex-proprietary rights in his holding, and that holding is held by him in any other capacity than that of an ex-proprietary tenant, if such person regains his proprietary right in the land held by him in such capacity, the land cannot become his sir, because at the time he regains his proprietary rights he does not hold the land as an *ex-proprietary tenant.*

———o———

'**Lambardar**' :—Means a co-sharer of a mahal appointed under the N.-W. P. and Oudh Land Revenue Act to represent all or any of the co-sharers in that mahal [sec. 4 (3), N.-W. P. and Oudh Land Revenue Act].

'**Minor**' :—means a person who, under section 3 of the Indian Majority Act, 1875, has not attained his majority [sec. 4 (5), N.-W. P. and Oudh Land Revenue Act].

Section 3 of the above Act runs as follows :—"Subject as aforesaid, every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall

be assumed by any Court of Wards before the minor has attained that age, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years, and not before."

Power of landholder to act through agent.

5. Save as otherwise expressly provided by this Act, and save as otherwise provided by the Code of Civil Procedure in the case of proceedings governed by that Code, anything which is by this Act required or permitted to be done by a landholder, may be done by an agent of the landholder authorized by him in this behalf; and process served on, or notice given to, such agent shall be as effectual for all purposes as if the same had been served on, or given to, the landholder in person; and all the provisions of this Act relating to the service of process on, or the giving of notice to, a party shall be applicable to the service of process on, or the giving of notice to, such agent.

This section corresponds to secs. 107, 141 and 143 of Act XII of 1881.

'Save as otherwise expressly provided by this Act':—as for instance in sec. 120 (*f*).

'Save as otherwise provided by the Code of Civil Procedure':—In the case of proceedings governed by the Code of Civil Procedure "any appearance, application, or act in or to any Court, required or authorized by law to be made or done by a party to a suit or appeal in such Court may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, provided that any such appearance shall be made by the party in person, if the Court so direct" (sec. 36 of the Code of Civil Procedure). The provisions of sec. 36 quoted above do not apply to the following sections in this Act, as those sections do not refer to any

appearance, application or act in or to any *Court*, and consequently anything which is required or permitted to be done by a landholder under those sections may be done by an agent who need not necessarily be a recognized agent. Those sections are sections 13, 14, 17, 26, 32, 33, 47, 55, 72, 85, 107, 108, 109, 110 and 111.

Recognized Agent:—Under sec. 37 of the Code of Civil Procedure "the recognized agents of parties by whom appearances, applications and acts may be done (under sec. 36 of the said Code) are:—(*a*) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties; (*b*) mukhtars duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtars; (*c*) persons carrying on trade or business for, and in the names of, parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts." But under sec. 193 (*c*) of this Act "in clauses (*a*) and (*c*) of sec. 37 of the Code of Civil Procedure, for the words 'not resident' shall be substituted the words 'whether resident or not'."

Under sec. 36 of the Code of Civil Procedure a recognized agent can file an application or enter an appearance on behalf of his principal; he cannot institute or defend a suit or appear in his own name (*Mokha Hurruckhraj Joshee* v. *Bissessur Doss*, 13 W. R., 344; *Carter* v. *Misree*, I. L. R., 2 All., 179; *Lala Manohur Dass* v. *Kishen Dyal*, 3 N.-W. P., 175; *Ladlee Pershad* v. *Gunga Pershad*, 4 N.-W. P., 59).

In *Jivaram* v. *Lachmi Chand*, (S. D. B. R., No. 3 of 1885), it was held that there is nothing in secs. 141 and 143 of Act XII of 1881 (corresponding to sec. 5 of this Act), which prevents an agent holding a general power-of-attorney from acting on behalf of a landlord under sec. 36, Act XII of 1881 (corresponding to sec. 58).

If a recognized agent, though able to do so, does not think proper to conduct the case on behalf of his principal, his mere presence in Court is not an appearance in the suit (*Soonder Lal* v. *Goor Prasad*, I. L. R., 23 Bom., 414).

A mere power to sue does not authorize an agent to do more than employ a vakil on the terms of paying him a reasonable remuneration (*Keshav Bapuji* v. *Narayan Shamrav*, I. L. R., 10 Bom., 18). A person authorized by a muktearnamah merely to look after a suit is not a

recognized agent (*Bhugwan Das* v. *Nund Lall Sein*, I. L. R., 12 Calc., 173, at p. 178). An agent, holding a power-of attorney authorizing him to act and appear for a party to a suit, cannot bring the suit to a close by offering to be bound by oath of the opposite party in a particular form (*Sadashiv Rayaji* v. *Maruti Vithal*, I. L. R., 14 Bom., 455). A person holding a power-of-attorney, even if authorized by the power to appear and defend suits on behalf of his principal, is at liberty to refuse to accept service of summons and appear in a suit brought against his principal, but may either act upon the power or not as he may think proper (In re *Luchmi Chund*, I. L. R., 8 Calc., 317).

Pleaders and vakalatnamahs :—See sec. 39 of the Code of Civil Procedure.

A letter is a sufficient authority to 'make or do any appearance, application or act in or to any Court,' if sufficiently stamped (*Bhogoban Persad Panda* v. *Baidi Sethi*, 1 C. W. N., ccviii).

No fresh vakalatnamah is necessary to appear in any proceedings subsequent to decree (*Shah Makhun* v. *Sreekishen Singh*, 8 W. R., 92), or for execution of decree (*Sadashiv Ganpatrao* v. *Vitthal Das Nanchand*, I. L. R., 20 Bom., 198). Where a vakil had been duly empowered by a vakalatnamah to file and conduct an appeal, and the appeal had been dismissed for default, it was held that such vakil was competent, without filing a fresh vakalatnamah, to present an application for restoration of the said appeal to the list of pending appeals (*Raghunath Singh* v. *Raghubir Sahai*, I. L. R., 15 All., 55). When the Collector of a district, who was agent for the Court of Wards, filed a suit on behalf of a ward of the Court of Wards and executed a vakalatnamah to a pleader whom he retained to conduct it, and the Collector died before the suit was determined, it was held that a fresh vakalatnamah was not necessary (*Krishna Vijaya Puchaya Naicker* v. *Marudanayagan Pillai*, I. L. R., 15 Mad., 135).

Mukhtars and Revenue Agents :—"No person shall practise as a revenue agent in any Revenue Court in the N.-W. P., unless he shall have been admitted and enrolled, and shall be otherwise duly qualified to practise as a revenue agent under the provisions of Act XVIII of 1879 (or of Act XX of 1865), and of these rules.

"Revenue agents, duly admitted and enrolled, may (subject to the conditions of their certificates as to the class of Courts in which they are authorized to practise) appear and act in any Revenue Court, provided they shall not appear, plead, or act in the High Court.

"Any person, though not enrolled as a revenue agent, may, under sec. 20 of the Act (XVIII of 1879), be authorized to transact all or any business in which his principal is concerned in any revenue office.

Such sanction may be given by endorsement on the power-of-attorney in which the agent's powers are set forth, and which should be duly stamped according to the Stamp Law. Collectors are empowered by Government Notification No. 628, dated 8th April, 1880, Revenue Department, to grant these authorizations and they continue in force until revoked.

"As doubts have been raised to the construction of the term 'authorized agent' in sec. 143, Act XII of 1881 (corresponding to sec. 5 of this Act), which is translated '*mokhtar-majaz*' in the Urdu version, revenue officers are reminded that sec. 20, Act XVIII of 1879, defines the persons who are authorized to practise in revenue offices, viz., pleaders and revenue agents holding certificates under sec. 18 of the Act. Mukhtars as defined in sec. 6 are not authorized to practise in revenue offices." [Board's Circular, Vol. I, 28-II, paragraphs 1, 12, 14 and 16].

Verification of plaints :—See secs. 51 and 52 of the Code of Civil Procedure.

Except in the case provided for by the last clause of sec. 51 of the Code of Civil Procedure, it is imperatively necessary that the plaintiff himself should sign his plaint (*Mahabir Prasad* v. *Shah Wahid Alum*, W. N., 1891, p. 152). If a plaintiff charges fraud on facts known to him, he should verify (*Raja of Tomkuhi* v. *Braidwood*, I. L. R., 9 All., 505; *Protap Chunder Banerjee* v. *Krishto Kishore Shaha*, I. L. R., 8 Calc., 885). Generally, if the plaint is filed by any person other than the plaintiff, the Courts should see that the verification has been actually signed by the plaintiff (*Nursingh Deb* v. *Rammohun*, Marshall's Report, 176). When the plaint is verified by a person other than the plaintiff, the Court must be satisfied that he is acquainted with the facts of the case, but in the case of a person holding a general power-of-attorney, or of any other recognized agent, the Court will not insist on any extreme stringency of proof (*Kastilino* v. *Rustomji*, I. L. R., 4 Bom., 468). The mere fact that the plaint in a suit has not been signed by the plaintiff named therein or by any person duly authorized by him in that behalf, as required by sec. 51 of the Code of Civil Procedure, will not necessarily make the plaint absolutely viod. A defect in the signature of the plaint or the absence of signature, where it appears that the suit was in fact filed with the knowledge and by the authority of the plaintiff named therein, may be waived by the defendant, or, if necessary, cured by amendment at any stage of the suit (*Basdeo* v. *John Smidt*, I. L. R., 22 All., 55).

Agent :—includes Karindas or Gomashtas. Where plaintiff sues as a Gomashta of the zemindar it is not necessary that a power of attorney or any other formal document conferring a special power on

the plaintiff should be produced, if it is proved for the evidence that he filled that character (*Madho Singh* v. *Gunneshee Lall*, 2 Agra, 275). The Gomashta may be authorized either verbally or in writing (*Rughoo Nundun Thakoor* v. *Ram Chundar Kupali*, 10 W. R., F. B., 39 ; *Modhoo Soodun Singh* v. *William Moran & Co.*, 11 W. R., 43 ; *Gopinath Chakravrati* v. *Umakant Das Roy*, I. L. R., 24 Calc., 169). All suits should be brought in the name of the person in whom the legal right of suit is vested, and not by agents in their own names (*Lala Manohur Dass* v. *Kishen Dyal*, 3 N.-W. P., 175 ; *Ladlee Pershad* v. *Gunga Pershad*, 4 N.-W. P., 59 ; *Fyazooddeen* v. *Pudmee*, 4 N.-W. P., 68 ; *Nubeen Chunder Paul* v. *Stephenson*, 15 W. R., 534 ; *Choonee Sookul* v. *Hur Pershad*, 1 N.-W. P., 277 ; *Juggunath* v. *Beck*, 2 N.-W P., 16 ; *Hursarun Singh* v. *Purshun Singh*, 2 N.-W. P. 415). A newly appointed Gomashta can sue for arrears of rent which accrued during the term of his predecessor (*Modhoo Soodun Singh* v. *William Moran & Co.*, 11 W. R., 43).

An agent appointed by one co-sharer landholder can act on behalf of such landholder only ; he cannot act for the whole body of the landholders unless they have appointed him to act on behalf of them all (sec. 194).

Service of process on agent or pleader :—See secs. 38, 40 and 41 of the Code of Civil Procedure.

A person to whom a power-of-attorney has been given may refuse to accept service of summons, that is, refuse to act on the power (*In re Luchmee Chand*, I. L. R., 8 Calc., 317). Service of notice of appeal upon respondent's pleader is good service on him (*Ishur Dutt* v. *Shiv Pershad*, 15 W. R., 290). Service of summons on a pleader calling on a party to appear and give evidence is good service (*Shivrudrappa* v. *Kashinath Vishnu*, I. L. R., 6 Bom., 141).

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants enumerated.

6. There shall be, for the purposes of this Act, the following classes of tenants, namely,—

(*a*) permanent tenure-holders,

(*b*) fixed-rate tenants,

(*c*) ex-proprietary tenants,

(*d*) occupancy tenants, and

(*e*) non-occupancy tenants.

This section is altogether new.

Clause (a) :—see sec. 7.

Clause (b) :—see sec. 8.

Clause (c) :—see sec. 10.

Clause (d) :—see sec. 11.

Clause (e) :—see sec. 19 and notes under sec. 4 (7).

Permanent Tenure-holders and Fixed-rate Tenants.

Permanent tenure-holders.

7. (1) When any permanent and transferable interest in land in a district or portion of a district which is permanently settled has deen held, otherwise than under a terminable lease, by any person intermediate between the proprietor of the mahal and the occupants, from the time of the permanent settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

(2) Such person shall be called a permanent tenure-holder.

This section corresponds to sec. 4 of Act XII of 1881 from which the words "and by the predecessor in interest of such person" have been excluded, as these words have become unnecessary in view of sec. 4 (1) of this Act. In determining whether a person is a permanent tenure-holder or not, the Court will be bound by the provisions of sec. 9.

'From the time of the Permanent Settlement' :—i. e., whose tenure was in existence when the Permanent Settlement was made (*Radheeka Chowdrain* v. *Rammohun Ghose*, 1 W. R., 367). The Permanent Settlement was made under Regulation I of 1795, with effect from 1197 Fasli (September 1789).

Fixed-rate tenants.

8. (1) When any land in a district or portion of a district which is permanently settled has been held by a tenant from the time of the permanent settlement at the same rate of rent, such tenant shall have a right of occupancy at that rate.

(2) Such tenant shall be called a fixed-rate tenant.

This section corresponds to sec. 5 of Act XII of 1881 from which the words "and his predecessors in interest" have been omitted, as those words have become unnecessary in view of sec. 4 (1) of this Act.

In determining whether a person is a fixed-rate tenant or not the Court will be bound by the provisions of sec. 9.

'Held' :—See under sec. 4 (2).

The holding must have been by a tenant all along ; it is not sufficient for the occupation to have been by one man partly as tenant and partly as proprietor (*Mitturjeet Singh* v. *Fitzpatrick*, 11 W. R., 206 ; *Ramnarain Singh* v. *Kaleshar Pattuk*, S. D. A., 1861, 642).

'From the time of the Permanent Settlement' :—See under sec. 7.

Liability of representatives of deceased tenant at fixed-rates to pay arrears of rent :—The legal representatives of a deceased tenant at fixed-rates who had died leaving the rent payable by him in arrears are liable for payment of such arrears to the extent of the assets

of the tenant which had come into their hands, and this liability was not affected by the question whether or not they took over the tenancy of the deceased themselves (*The Maharaja of Benares* v. *Daljit Singh*, I. L. R., 19 All., 352 ; W. N. 1897, p. 88).

Presumption from entry at the last revision of records before this Act.

9. Every entry at the last revision of records before the commencement of this Act recording a person as a permanent tenure-holder, or a fixed-rate tenant, or otherwise, shall, in the absence of a judicial decision to the contrary in proceedings instituted before the commencement of this Act, be conclusive proof that such person is a permanent tenure-holder, or a fixed-rate tenant, or not, as the case may be.

This section has been inserted in place of sec. 6 of Act XII of 1881.

The Select Commitee in their report printed at p. 51 of the N.-W. P. and O. Gazette dated 22d June, 1901, say :—

"The section as originally drafted practically reproduces section 6, Act XII of 1881, without any material change. That section has formed part of the rent law of these Provinces since Act X of 1859. At that time there was no record of rights in the permanently settled districts, and the presumption contained in that section was fair and necessary. Circumstances have changed since then, and since the passing of Act XII of 1881. During the years 1880 to 1886 a revision of records under Chapter III of Act XIX of 1873 was made throughout those districts, and all claims to permanent tenures and fixed-rate tenancies were investigated, and tenants found to be entitled to such privileges were so recorded. In the case of all tenants who were then excluded from the category of such tenants not only is there no longer any presumption of a fixed-rate tenancy from twenty years' occupation without a change of rent, but such a presumption, if permitted, might conflict with the presumption under sec. 91, Act XIX of 1873, that a tenant who was recorded at the revision of records as being other than a fixed-rate tenant is not such a tenant, even though his rent has not been changed within the last twenty years. We have, therefore, redrafted this section accordingly."

'Conclusive proof' :—When one fact is declared to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose

of disproving it (Indian Evidence Act I of 1872, sec. 3). If, therefore, there has been a mistake or error in the entry at the last revision of records before the commencement of this Act, no evidence can be admitted for the purpose of disproving the entry or for proving that there has been an error or mistake. But the amount of rent paid is not conclusive evidence of the amount of rent at which land is held, but may be rebutted by showing that the actual rent is greater or less (*Anund Moyee Dossia* v. *Ranee Shurno Moyee*, 6 W. R., Act X, 83).

Ex-proprietary Tenants.

Ex-proprietary tenants.

10. (1) Every proprietor, whose proprietary rights in a mahal or in any portion thereof, whether in any share therein, or in any specific area thereof, are transferred, on or after the commencement of this Act,

either by sale in execution of a decree or order of a Civil or Revenue Court, or by voluntary alienation, otherwise than by gift or by exchange between co-sharers in the mahal, shall become a tenant with a right of occupancy in his sir land, and in the land which he has cultivated continuously for twelve years at the date of the transfer, and shall be entitled to hold the same at a rent which shall be four annas in the rupee less than the rate generally payable by non-occupancy tenants for land of similar quality and with similar advantages in the neighbourhood.

(2) A usufructuary mortgage shall be deemed to be a transfer within the meaning of this section.

(3) If a part only of the share of a proprietor in a mahal or in any portion thereof is so transferred, such proprietor shall become a tenant with a right of occupancy in so much of his sir land, and of the land which he has cultivated continuously for twelve years

at the date of the transfer, as appertains or corresponds to such part of his share.

(4) Every such tenant, and every tenant having the same rights under the corresponding provisions of Act XVIII of 1873, Act XII of 1881, or any other enactment for the time being in force, shall be called an ex-proprietary tenant, and, save as otherwise expressly provided, shall have all the rights and be subject to all the liabilities conferred and imposed upon occupancy tenants by this Act.

(5) The land in which such occupancy right has been created shall be specified and the rent payable therefor shall be fixed by the Collector under section 36 of the North-Western Provinces and Oudh Land Revenue Act, 1901.

N.-W. P. & O. III of 1901.

(6) Nothing in this section shall confer a right of occupancy in any land transferred for any public or private purpose inconsistent with the existence of a right of cultivation therein.

This section corresponds to sec. 7 of Act XII of 1881.

Sub-section (1) :—

'Proprietor':—S was recorded as proprietor of an estate. It was eventually held that she had only claim to maintenance, that the real proprietor was her son G. The estate was sold in execution of a decree against him by the Civil Court. J, the auction-purchaser attempted to eject S from the land which was formerly recorded as her *Sír* and which she still cultivaled. *Held* that the real ex-proprietor was G, and that if he were in cultivating possession of the *Sír* formerly held by him or S, he was an ex-proprietary tenant. (*Janki Parshad* v. *Mussammat Sheokali Kunwari*, 3 L. R., R. R. S., 16).

'Transferred' :—See report of the Select Committee given under sub-section (2).

'Alienation' :—would not seem to include giving a lease, for, by giving a lease proprietary rights are not transferred.

'Exchange' :—would include exchange made at the time of the partition of a mahal (see secs. 125 and 126, N.-W. P. and Oudh Land Revenue Act, which are given below).

Section 125 :—In making a perfect partition, if the partition cannot otherwise be conveniently carried out, or the portions cannot be made compact, the Collector, or with the sanction of the Collector, the Assistant Collector making the partition, may, without the consent of the parties concerned, include in the portion alotted to one co-sharer land held as Sir or in severalty by another co-sharer, provided no reasonable objection thereto is shown.

Section 126 :—When any exchange of Sir has been effected such Sir shall become the Sir of the co-sharer in whose portion it is included ; and when any land held as Sir by any co-sharer is included in the portion alotted to one co-sharer, otherwise than by exchange of Sir, and the former continues to cultivate it after partition, he shall be an ex-proprietary tenant thereof, and the rent to be paid therefor shall be fixed by the Collector before the partition is confirmed.

'Shall become a tenant with a right of occupancy' :—These words are intended by operation of law to confer upon the proprietor who has sold his proprietary rights in a mahal irrespective of whether he claims it or not, the status of an occupancy tenant (*Gulab Rai* v. *Indar Singh*, I. L. R., 6 All, 54 ; W. N. 1883, p. 207). If the proprietor does not at once claim his ex-proprietary tenant rights he does not lose it (*Tulshi* v. *Radha Kishen*, W. N. 1886, p. 74 ; *Harjas* v. *Radha Kishan*, I. L. R., 8 All., 256). Whenever a person "loses or parts with his proprietary rights in a mahal" within the meaning of sec. 7, Act XII of 1881, the land held by him as Sir at the date of such loss or parting ceases *ipso facto* to be Sir, whether such person remains or does not remain in cultivating possession of it (*Ramjas Singh* v. *Sheo Shankar Singh*, S. D. B. R., No. 2 of 1900).

'In his sir land' :—The words used in sec. 7 of Act XII of 1881 were "in the land held by him as Sir" which were interpreted to mean 'belonging to him or to which he was entitled as Sir' (*Tulshi* v. *Radha Kishan*, W. N. 1886., p. 74 ; *Harjas* v. *Radha Kishan*, I. L. R., 8 All., 256). But such an interpretation is no longer needed, for the words used are "in his Sir land."

'Sir land' :—See notes on " Sir " under sec. 4 (13), specially notes on Proviso 1 to the definition of "Sir."

Burden of proving continuous cultivation of land for twelve years at the date of transfer :—lies on the person who claims to be an ex-proprietory tenant to the land (*Hari Das* v. *Ghansham Narain*, I. L. R., 6 All., 286).

'**Land**' :—with the trees standing thereon (*Per Straight J., in Jugal* v. *Deokinandan*, W. N. 1886, p. 320).

'**Rate generally payable**' :—see under sec. 42 (1) (a).

'**Similar quality**' :—see under sec. 42 (1) (a).

'**Similar advantages**' :—see under sec. 42 (1) (a).

Relinquishment of ex-proprietary rights :—A contract that if any sharer's Sir fell on partition in another mahal or portion the former Sir-holder should give up both the Sir and its cultivation is viod (*Indra* v. *Khushhi*, W. N. 1886, p. 88).

Though a covenant in a deed of sale of a mahal that the vendor should surrender immediate possession of the Sir land would be void by reason of sec. 7, Act XII of 1881, there is nothing to prevent such vendor subsequently relinquishing such ex-proprietary rights to the zamindar. Certain zamindars, having sold their proprietary rights in a mahal, subsequently surrendered to the vendees their ex-proprietary holding and gave them possession. After the vendees had been thus in possession for several years the vendors sued them for the recovery of the ex-proprietary holding. *Held* that the acts of the vendors as above mentioned amounted to a relinquishment of their ex-proprietary rights and that they could not recover possession (*Kuar Sen* v. *Darro Kuar*, W. N., 1893, p. 182).

Land was mortagaged and the landholder (plaintiff) became in consequence an ex-proprietary tenant in his Sir. The plaintiff was ejected from this land in 1291 F., and it was held in 1292 by another, and the plaintiff again got possession under a fresh agreement only in 1293 F. It was held that the plaintiff's ex-proprietary rights in the land were lost (*Debi Prasad* v. *Jawahir*, S. D. B. R., No. 3 of 1889).

If a zamindar sells his zamindari rights and includes in the sale the right to culivatory possession of the Sir land and agrees to relinquish his ex-proprietory rights in respect of the Sir land, the vendee, in the event of such possession not being delivered or ex-proprietory rights not being relinquished, is not entitled to claim a refund of the sale price or any portion thereof (*Murlidhar* v. *Pemraj*, W. N., 1900, p. 10 ; *Bhikham Singh* v. *Har Prasad*, I. L. R., 19 All., 35 ; W. N., 1896, p. 167). By a mutual agreement entered into between the parties to a private partition of certain villages held by them jointly the parties agreed that, if either party at the time of the partition was holding Sir land in a village which upon partition fell into the share of the other party, he would relinquish his rights in Sir land in favour of the party into whose share the said village had fallen. *Held* that under such private partition the holder of the Sír land became, on partition being effected, an ex-proprietary tenant in res-

pect of the land previously held by him as Sír, and that consequently the agreement to relinquish his rights in such land was not enforceable in law (*Kashi Prasad* v. *Kedar Nath Sahu*, W. N., 1898, p. 47).

Sub-section (2) :—The Select Committee in their report printed at p. 51 of the N.-W. P. and O. Gazette dated 22d June, 1901, say :—"The transfer of proprietary right which gives rise to an ex-proprietary tenancy is [with the exception only of the case of a usufructuary mortgage dealt with in sub-section (2)] a complete alienation of the entire rights and interests of the proprietor in the property which is the subject of the transfer. A simple mortgage, or a hypothecation or a permanent lease, under which the propreitor still retains the rights of a mortgagor or lessor, is not a transfer within the meaning of this section. To this rule one single exception has been made, *viz.*, the usufructuary mortgage. Such a mortgage would not, without special provision to that effect, come within the meaning of a transfer of proprietary rights referred to in sub-section (1), and under the existing law it has been ruled that a mortgage is not a losing or parting with proprietary rights, but it transfers the possession of the property to the mortgagee, and it therefore becomes necessary to consider whether the position of the mortgagor who continues to occupy his Sir land should be left to be determined by the parties to the mortgage. To do so would ordinarily have the effect of reducing the mortgagor during the subsistence of the mortgage to the position of a non-occupancy tenant of his Sir. We consider that it is inconsistent with the policy on which the section is based to allow such a result to follow on a usufructuary mortgage. It is true that by securing to the mortgagor the right to remain on as ex-proprietary tenant of his Sir land, the terms on which such mortgages are accepted will be affected, and the mortgagor may, if he remains in cultivation of his Sir, be kept somewhat longer out of possession of the property. But of the two evils it appears to us that the lesser evil will be to postpone the redemption of the mortgage for a short time if the mortgagor can have secured to him a means of livelihood as long as the mortgage subsists. It is with this object that sub-section (2) has been inserted."

Sub-Section (3) :—This section follows the rule laid down by the High Court in *Murli Dhar* v. *Pemraj*, (I. L. R., 22 All., 205) and *Bhawani Prasad* v. *Ghulam Mohamed*, (I. L. R., 18 All., 121).

The Select Committee in their report printed at p. 52 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—Sub-section (3) has been inserted to remove all doubts on a point on which there have been conflicting rulings. It provides that when the interests of a proprietor in a fraction of his share in a mahal are transferred he shall have an ex-pro-

prietary tenancy in a corresponding portion of the Sir and *Khudkasht* appertaining to his share. This will ordinarily involve a partition of his Sir land &c., into two portions, that which he will continue to hold as the Sir &c., corresponding to that portion of his share which has not been transferred, and that which will constitute his ex-proprietary holding. The procedure for effecting such a partition and for fixing the rent payable by the ex-proprietary tenant is laid down in sec. 36 of the N.-W. P. and Oudh Land Revenue Act, 1901, and the new sub-section (5) refers to that section."

Sub-section 5.—Sec. 36 of the N.-W. P. and Oudh Land Revenue Act runs as follows :—

"(1) When a right of occupancy has been created under the provisions of Sec. 10 of the N.-W. P. Tenancy Act, 1901, or sec. 7A of the Oudh Rent Act, 1886, as the case may be, in favour of an ex-proprietary tenant, the Collector shall, in the course of the mutation proceedings under sec. 35, or, if more convenient, in a separate proceeding, pass an order specifying the land in which such occupancy right has been created, and fixing the rent payable therefor in accordance with the provisions of those sections.

"(2) The rent so fixed shall be payable from the date the ex-proprietary tenancy arose, subject to the law of limitation as to arrears of rent, and, save as provided by sec. 41 of the N.-W. P. Tenancy Act, 1901, or sec. 35 B of the Oudh Rent Act, 1886, shall not be liable to enhancement or abatement for a period of ten years, except by order of a Settlement Officer under sec. 87 of this Act.

"(3) If the case is one in which the Tahsildar would otherwise be empowered to order mutation of names under sec. 35, he shall refer it to the Collector.

"(4) If for any reason an order specifying the land and fixing the rent payable has not been passed under sub-section (1), the landholder or tenant, or any co-sharer directly interested in such matter, may at any time during the continuance of an ex-proprietary tenancy apply for the issue of such order."

Occupancy Tenants.

Acquisition of right of occupancy.

11. A tenant who has held the same land continuously for a period of twelve years shall have a right of occupancy in such land :

Provided that no tenant shall acquire under this section a right of occupancy in any land which he holds—

(*a*) as a lessee holding under a registered lease for a term of not less than seven years ; or

(*b*) as a thekadar ; or

(*c*) as a sub-tenant :

and no right of occupancy shall be acquired—

(*d*) in sir land ; or

(*e*) in any land which is or forms part of a military encamping-ground or other area acquired or held for a public purpose, or a work of public utility :

Provided, also, that in computing the period of twelve years any time for which the land has been sub-let, or otherwise transferred, in contravention of the provisions of this Act, shall be excluded, but shall not be deemed to break the continuity of the tenant's holding.

Illustrations.

(*a*) A, a non-occupancy tenant, has cultivated the same land continuously for five years, sut-let it for a term of two years,and then again cultivated it continuously for five years. A has not acquired a right of occupancy in the land ; but, if he cultivates the land continuously for two years more, otherwise than in any of the capacities specified in clauses (*a*) to (*c*) of the first proviso to this section, he will then acquire a right of occupancy in the land.

(*b*) A, a non-occupancy tenant, has cultivated the same land continuously for four years, lawfully sub-let it for one year ; then again cultivated it for two years, then, in contravention of the provisions of sub-section (3) of section 25, again sub-let it for one year, then again cultivated it for four years. A must cultivate the land for another year in order to acquire a right of occupancy.

This section corresponds to sec. 8, Act XII of 1881.

'Tenant' :—See sec. 4 (5) and notes thereunder.

'Held' :—See under secs. 4 (2) and 8. Section 8, Act XII of 1881, required that the tenant should have "actually occupied or cultivated

land." But this Act requires simply that the land be *held* by the tenant.

The holding of a person from whom the tenant inherits is holding within the meaning of this section [sec. 4 (1)].

'Land' :—See sec. 4 (2) and notes thereunder.

A right of occupancy under this section can be acquired in land, and as land has been defined by this Act to be "land let or held for agricultural purposes," grove-land is not land within the meaning of this Act, and a right of occupancy cannot therefore be acquired in respect of it. In *Girwar Sahai* v. *Janki Prasad*, (S. D. B. R., No. 3 of 1888), it was held that the period of occupation of a grove before it came under cultivation cannot count towards the period required for the acquisition of a right of occupancy.

The plaintiffs, as holders of a lease from the proprietor which gave them the right of cutting grass and other spontaneous produce of the lands, did not, merely by reason of lengthened enjoyment, acquire any right of occupancy in respect of such holding, because the tenure under which they claimed to hold was not a holding of *land* (*Goor Dial* v. *Ram Dut*, Agra, F. B., 15). Where land had been held for grazing purposes and had subsequently been brought under cultivation without any fresh contract between the landlord and tenant, a right of occupancy began to accrue from the year in which cultivation began, not from the year in which the land was taken for grazing purposes (*Debi Das* v. *Joti*, S. D. B. R., No. 19 of 1892 ; *Mussammat Saidulnissa Begum* v. *Niaz Ali*, 3 L. R., R. R. S., 61 ; but see sec. 34 in connection with these rulings.

In *Moolchand* v. *Cheetree*, (1 N.-W. P., 175), it was held that in a tank producing water-nuts which do not grow spontaneously, but are the result of sowing or planting, a right of occupancy can be acquired. But this ruling is no longer applicable under the present law, as a tank in which water-nuts are grown is not land within the meaning of this Act, though payment on account of such tanks is 'rent' within the meaning of sec. 4 (3).

'Same land' :—See explanation of it in sec. 14.

'Continuously.' :—See explanation of "continuous holding" in sec. 13.

In computing the period of twelve years, any time for which the land has been sub-let, or otherwise transferred, in contravention of the provisions of this Act, shall be excluded, but shall not be deemed to break the continuity of the tenant's holding (see last proviso to this section).

The continuous possession for twelve years must be a possession under one and the same right. This right may be in its inception joint

with other persons, and, by the death of co-sharers, ultimately become a sole right without its continuous nature being affected (*Forbes* v. *Ram Lall Biswas*, 22 W. R., 51). A tenant who has occupied or cultivated alluvial land, whenever such land was capable of occupation or cultivation, for twelve years, acquires by such occupation or cultivation a right of occupancy in such land, such occupation being deemed to be continuous (*Lachman Prasad* v. *Bal Singh*, I. L. R., 4 All., 157 ; W. N., 1881, 170 ; cf., *Dwarka Prasad* v. *Behari Lal*, W. N., 1886, p. 219). Plaintiff mortgaged his land and became in consequence an ex-proprietary tenant in his sir. He was ejected from the ex-proprietary holding in 1291 F., and it was held in 1292 F. by another, and the plaintiff again got possession under a fresh agreement only in 1293 F. It was held that the right of occupancy which the plaintiff enjoyed in 1291 F. as an ex-proprietary tenant was then brought to an end, and the present tenancy was of a date too recent to confer fresh occupancy rights (*Debi Prasad* v. *Jawahir*, S. D. B. R., No. 3 of 1889).

'Twelve years' :—*i. e.*, full twelve years.

In *Girdhar Das* v. *The Maharajah of Benares*, (2 L. R., R. R. S., 50), it was held that it is not sufficient for a tenant, who contests a notice of ejectment, to show that he has been in continuous possession for eleven years and that he has by the date the notice of ejectment was served on him exercised the right of a tenant for both *fasals* of the twelfth year ; to establish a right of occupancy he must show that when the notice was served on him he had completed twelve statutory years of possession.

For the time from which the period of twelve years begins to run see sec. 12. If the lease specifically mentions a date from which it is to take effect, time will run from such date. In other cases it will run from the 1st July to the 30th June, *i. e.*, with the agricultural year. Under sec. 110, Act IV of 1882, "where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease."

The period during which the tenant may occupy the land in accordance with the provisions of secs. 73, 74 and 75 shall not be taken into consideration in any suit or other proceeding in computing the period prescribed by sec. 11 for the acquisition of a right of occupancy (sec. 78).

Who can and who cannot acquire occupancy rights :— A right of occupancy under this seection can be acquired only by a tenant. A person, therefore, whose relation with the landholder is not that of a tenant cannot acquire occupancy rights. A mere trespasser occupying land without the consent of the landholder cannot acquire

occupancy rights (see sec. 34 ; see also *Sheikh Peer Bux* v. *Sheikh Meahjan*, W. R., F. B., 146 ; *Sheikh Gholam Hyder* v. *Rajah Poorno Chunder Roy*, 3 W. R., Act X, 147). Possession obtained and continued through fraud is not such possession as would confer occupancy rights (*Bhoobunjoy Acharjee* v. *Ram Narain Chowdhry*, 9 W. R., 449). Mere possession of a permissive character cannot confer a right of occupancy (*Mohur Ali Khan* v. *Ram Ruttun Sen*, 21 W. R., 400). Cosharers who hold and cultivate the land of a proprietor in his absence as his trustees, cannot be deemed to be tenants, and cannot, therefore, acquire any rights of occupancy in such land during the absence of the proprietor whose trustees they are ; their occupation as tenants commences only from the date on which the absentee proprietor recovers possession of his proprietary rights (*Nand Ram* v. *Bahal and Nihal*, 3 L. R., R. R. S., 30). The period during which the occupant of land is in possession as *malik* cannot be included in considering whether he has acquired a right of occupancy ; such a right must be acquired against some body, and cannot be acquired by a man against himself (*Lal Bahadoor Singh* v. *Solano*, I. L. R., 10 Calc., 45). A zemindar occupying his own land as *nij-jote* cannot, when the zemindari passes into other hands, lay claim to them on the ground that he is a ryot with rights of occupancy (*Reed* v. *Sreekishen Singh*, 15 W. R., 430). The occupation required for the acquisition of occupancy rights must be that of a tenant during the whole period of occupation (*Dip Singh* v. *Mussammat Gulab Dei*, S. D. B. R., No. 2 of 1889). A right of occupancy is not affected by a mere change in the landholders (*Sheo Churn Singh* v. *Gora Chand Ghose*, 3 W. R., Act X, 125). The mere fact that the person to whom the tenant for some years paid rent had no title cannot prevent his counting those years towards the acquisition of a right of occupancy (*Syud Ameer Hossein* v. *Sheo Suhae*, 19 W. R., 338). A ryot occupying and cultivating land for more than twelve years under a landlord who has no title to the land, nevertheless acquires a right of occupancy. The right is not one conferred by any lessor. It is a right which, by virtue of the law, grows up in the ryot from the mere circumstance of cultivating the land for twelve years or upwards (*Zoolfun Bibee* v. *Radhica Prosonno Chunder*, I. L. R., 3 Calc., 560 ; 1 C. L. R., 388). Confiscation of the zemindar's rights will not operate to interrupt the growth of a right of occupancy claimed by a tenant (*Sheoraj* v. *Legge*, 3 Agra, 293). A ryot whose holding has commenced or continued under a mortgagee in possession and who has held it for twelve years is entitled to a right of occupancy therein (*Guroo* v. *Dhoree*, 2 N.-W. P., 129 ; S. C., Agra., F. B., 204). The right of occupancy may be acquired during the currency of a usufructuary mortgage and during the period of the mortgagee's possession of the zemin-

dari rights, and the zemindar upon redeeming the mortgage cannot disturb the possession of such occupancy tenants on the ground that when he mortgaged the zemindari it was free of such occupancy tenures (*Harpal Singh* v. *Balgobind*, I. L. R., 7 All., F. B., 586 ; W. N., 1885, 134). A mortgagee of proprietary rights cannot acquire occupancy rights by twelve years' cultivation, because under sec. 4 (5) such mortgagee is not a tenant, and under this section a tenant only can acquire occupancy rights. In *Parma* v. *Umrao Singh*, (S. D. B. R., No. 1 of 1885), it was held that a person holding as a proprietary mortgagee cannot create for himself a title toward acquiring a tenant-right-of-occupancy during the period of his tenure as proprietary mortgagee.—A person who holds land in lieu of service cannot acquire occupancy rights in such land, for under this section a tenant only can acquire occupancy rights, and a person who holds land on service-tenure is not a 'tenant' within the meaning of this Act [see sec. 4, sub-sections (5) and (6)]. But when a rent-free grant is found to be liable to have rent assessed thereon, the grantee will be deemed to have been a tenant from the date of the grant, and he may be declared to be an occupancy tenant (sec. 157). On proof of a custom by which old established tenants on being appointed *mucaddams* of a village are allowed to hold their land rent-free, the presumption will be strong that previous to such appointment they had acquired occupancy rights in such land (*Kanhya Lall* v. *Bhura Singh*, 1 L. R., R. R. S., 179). Plaintiff mortgaged his land and became in consequence an ex-proprietary tenant in his *Sír*. He was ejected from the ex-proprietary holding in 1291 F., and it was held in 1292 F. by another, and the plaintiff again got possession under a fresh agreement only in 1293 F. It was held that the right of occupancy which the plaintiff enjoyed in 1291 F. as an ex-proprietary tenant was then brought to an end and the present tenancy is of a date too recent to confer fresh occupancy rights (*Debi Prasad* v. *Jawahir*, S. D. B. R., No. 3 of 1889).

Payment of rent not necessary for the acquisition of occupancy rights :—See notes on "Payment of rent not necessary to establish or maintain a tenancy" under sec. 4 (5). In *Narain Roy* v. *Opnit Missar* (I. L. R., 9 Calc., 304) it was held that the essential conditions of Sec. 6, Bengal Act VIII of 1869 (corresponding to this section), are fulfilled without showing the payment of rent, that only being a condition necessary for the maintaining of the right when created.

Non-payment of rent gives no title to land :—In *Poresh Narain Rai* v. *Kashi Chandra Talukdar* (I. L. R., 4 Calc., 661) it was held that non-payment of rent will not relieve an occupancy raiyat of his status of tenant so as to give him a title to the land.

Accrual of occupancy rights to Firms :—"Firms" or "Concerns" have no corporate or legal existence so far as the acquisition of occupancy rights is concerned, which can only be recognised in particular individuals (*Cannan* v. *Kylash Chunder Roy*, 25 W. R., 117 ; *Rai Komul Dossee* v. *Laidley*, I. L. R., 4 Calc., 957 ; *Laidley* v. *Gour Gobind Sarkar*, I. L. R., 11 Calc., 501).

Occupancy rights in accretions to occupancy holdings :—Under Sec. 4, clause 1, Regulation XI of 1825, the incidents of the original tenure attach to the increment (*Gholam Ali* v. *Kali Krishna Thakur*, I. L. R., 7 Calc., 479 ; 8 C. L. R., 517). If a tenant has acquired a right of occupancy in his original holding he would enjoy a similar right in the land which has accreted to his holding, although he may not establish that he has held such accreted land for twelve years (*Oodit Rai* v. *Ramgobind Singh*, 2 Agra, Part II, 206 ; *Gaur Hari Kaibartto* v. *Bhola Kaibartto*, I. L. R., 21 Calc., 233).

Acquisition of occupancy rights in the Family Domains of the Maharaja of Benares :—In *Ram Pershad Shukul* v. *The Maharajah of Benares*, (1 L. R., R. R. S., 146), it was held that long cultivating possession gives to a tenant a right of occupancy in the Family Domains of the Maharaja of Benares. In *The Maharajah of Benares* v. *Ram Das Misr*, (1 L. R., R. R. S., 152), it was held that in the Family Domains a tenant-at-will can acquire occupancy rights by uninterrupted possession for twenty years without lease.

Veto on contracts barring acquisition of occupancy rights :—Under sec. 3 (2) (*a*) "nothing in any lease or agreement made between a landholder and a tenant on or after the 1st day of April, 1900, shall prevent the tenant from acquiring a right of occupancy in land in accordance with the provisions of this Act." See also *Kauri Thakurani* v. *Ganga Narain Lal*, (I. L. R., 10 All., 615 ; W. N., 1888, p. 239).

Occupancy rights cannot be conferred :—The right of occupancy is a statutory right and a proprietor has no power to confer such rights. Section 16 of the Bill as originally drafted provided that "a proprietor shall be competent to confer upon a tenant a right of occupancy in his holding or any portion thereof." The Select Committee omitted the above section from the second amended draft Bill with the following remarks :—"This section has been unfavourably criticised on all sides, by landholders as well as by others. The objection to it, which, in our opinion, is conclusive, is that it would open the door to all manner of fraud—fraud on his creditors by an insolvent landholder ; fraud on his heirs by a landholder who has quarrelled with those heirs ; fraud on reversioners by a widow or any other person possessing only a life-interest in the property. Such a

provision is, moreover, inconsistent with the principle that a right of occupancy is not transferable; and there can be no doubt that in the instances mentioned above the proprietor who professed to confer occupancy rights would, in point of fact, do nothing else than sell them. In all the opinions on the Bill that had been laid before the Committee we have been unable to discover that there is any desire in any quarter for such a provision, and those who do not advocate its withdrawal consider that it should be safe-guarded by various restrictions and limitations which in practice would be very difficult to give effect to. We have therefore omitted the section."

In *Jagarnath Pershad Sheopal* v. *Sadho* (3 L. R., R. R. S., 10) it was held that a right of occupancy is based upon prescription and cannot be created by contract even by the landholder.

Relinquishment of occupancy rights cannot defeat the interests of the successors in that right :—K, the occupancy tenant of certain land, to whom the landholder had granted a lease thereof for a certain term, gave the latter a kabuliyat containing the following clause :—"On the expiration of the term the landholder shall have the power to keep the said land under my cultivation at the former rent or at an enhanced rent as may be agreed upon between the parties, or he may make over the land to some other cultivator at an enhanced rent fixed by himself." K died before the expiration of the lease, and was succeeded by his sons. On the expiration of the lease the landholder sued K's sons in the Civil Courts for possession of the land, claiming under the kabuliyat. *Held* that whatever might have been the effect of the kabuliyat as regards K, it could not defeat the rights of his sons who had become by inheritance cosharers in the right of occupancy (*Lalji* v. *Nuran*, I. L. R., 5 All., 103).

Right of occupancy in changed holding :—A tenant who has a right of occupancy in any land shall have a right of occupancy in any other land (be it sir or otherwise) which he may receive in exchange therefor, and shall thereupon cease to have a right of occupancy in the land so given by him in exchange (sec. 17).

Transfer of occupancy holding :—See secs. 20 and 21.

Reliquishment by an occupancy tenant of his holding is not a 'transfer' within the meaning of sec. 9, Act XII of 1881, (corresponding to sec. 20 of this Act) [*Lalji* v. *Nuran*, I. L. R., 5 All., 103].

Clause (a) :—This clause creates an important change in the law. Act XII of 1881 provided that if a tenant cultivated land under a written lease for any number of years however short, the period of such lease would not count towards the acquisition of a right of occupancy therein. But now under this section a lessee holding under a lease for a term of

less than seven years would count such term towards the acquisition of occupancy rights.

'Registered lease for a term of not less than seven years' :—See secs. 54, 68 and 157 (4).

For 'registered' see sec. 4 (11) and notes thereunder.

Clause (b) :—

'Thekadar' :—See sec. 4 (6).

A tenant who had cultivated certain fields for less than twelve years obtained a theka of the whole village comprising those fields and continued to cultivate them during the period of the theka. It was held that he could not complete the acquisition of a right of occupancy in the fields while he was the transferee of the proprietary rights of the lands comprised within his theka (*Sahu Salik Chand* v. *Hulasa*, S. D. B. R., No. 3 of 1898). In *Thomas Savi* v. *Punchanun Roy*, (25 W. R., 503), it was held that where a person, holding some land at first as a ryot, subsequently obtained a farming lease of it, and thus became assignee of the landlord's interests and took advantage of his position to allow himself to acquire a right of occupancy as a raiyat, the proprietor, on the termination of the farming lease, was entitled to have the land back free of all encumbrances. Although the doctrine of merger does not hold in this country, and the same person may hold a piece of land both as a raiyat and farmer distinctly, yet as the raiyat's occupation is a possession adverse to that of the landlord, it follows that in any case in which in consequence of the two interests being held by the same person, the landlord's will and restraining power as against the tenant are in abeyance, the raiyottee right is also so far in abeyance that it cannot undergo any change until the landlord's rights are released from the custody of the tenant. Where a raiyottee interest, therefore, co-exists with a farming title, the raiyottee interest must remain unchanged in character during the currency of the farming lease.

A right of occupancy cannot be acquired by holding under a farming lease after it has expired, because one of the implied terms of such a holding would seem to be that, at the expiration of the time, the tenancy should come to an end and quiet possession of the land be restored to the landowner (*Gilmore* v. *Sreemunt Bhoomick*, W. R., 1864, Act X, 77).

It is not necessary that the farming lease or theka be in writing; a thekadar will not acquire occupancy rights whether the lease under which he holds is written or verbal (*Rao Karan Singh* v. *Khubee Singh*, 1 L. R., R. R. S., 159; *Kulyan Das* v. *Dungar Singh*, 1 L. R., R. R. S., 169). The lessee of a proprietor's interest stands during the period of the lease in the place of the proprietor (*Doorga Lall* v. *Lalla Hulwant Sahoy*, 25 W. R., 306). His cultivation, therefore, of any land comprised

in his theka is not the cultivation of a tenant so as to confer upon him the right of occupancy : he cannot be his own tenant.

Clause (c) :—

'Sub-tenant' :—See sec. 4 (7) and notes thereunder. Cultivators in *Gorait's* jagirs can be considered tenants-in-chief only from the date of resumption of such jagirs, and their tenancy, previous to that date, cannot be reckoned for the acquisition of occupancy rights (*Maharaja Radha Pershad Singh* v. *Loknath Tewari*, 2 L. R., R. R. S., 70).

Clause (d) :—

'Sir' :—See notes on this head under sec. 4 (13). Where land, originally the sír of a proprietor, has been transferred to a mortgagee, and has in his hands lost its character of sír, and has been leased to a tenant on the usual conditions of a tenancy, which otherwise do not bar the acquisition of a right of occupancy in the land, such a right will be acquired by twelve years' occupancy (*Harpal Singh* v. *Bal Gobind*, I. L. R., 7 All., 586). Although no right of occupancy can be acquired under this clause in sír land, yet a tenant who has right of occupancy in any land will have a right of occupancy in any other land (be it sír or otherwise) which he may receive in exchange therefor, and will thereupon cease to have a right of occupancy in the land so given by him in exchange (sec. 17).

The Select Committee in their report on sections 11 to 14, printed at page 52 of the N.-W. P. and O. Gazette, dated 22nd June 1901, say :— "In these sections the Bill provided that a tenant who has held any land under the same landholder for twelve years should have a right of occupancy in all the land he is holding at the time of the inquiry in to the tenure under which he is holding the land. This provision is similar in character to that contained in section 20 of the Bengal Tenancy Act, and would have had the effect of introducing the 'settled ryot' but for the limitation contained in the second paragraph of section 11, which excludes from the twelve year period any time during which the tenant was holding only as an occupancy or other privileged tenant or under a seven years' lease, or as a thekadar. In other words, it was not until the tenant began to hold land in addition to the land in which he had already acquired a right of occupancy that his continuous occupation would commence towards the acquisition of a right of occupancy in any other land. This limitation met the objection which was urged that the provisions of section 11 would allow an occupancy tenant to acquire a right of occupancy forthwith in any land from time to time given to him in addition to his occupancy holding.

"Under the law, as it has existed in these Provinces since the passing of Act X of 1859, a right of occupancy can only be acquired in land

which has been actually occupied by the tenant for twelve years, and even in the case of such land the term for which it is held under a lease is excluded from the calculation. It has therefore always been possible for the landholder to prevent the acquisition of a right of occupancy in any case by inducing the tenant (which he can always do under a threat of ejectment) to take a lease for a term, however short, from time to time. This has been the plan adopted by the more intelligent landholders, and so far as it has the effect of leaving a tenant undisturbed for the term of his lease, it has been to the tenant's advantage; but its defect lies in the fact that for this special purpose a lease, however short, is as efficacious as a long lease.

"The other expedients adopted are the shiftings of fields and nominal ejectments under section 40, Act XII of 1881, which have been frequently described. Both these expedients are justifiable under the letter of the law as it at present stands. But it can hardly be doubted that they are against its spirit. The principle that underlies the provisions of Act X of 1859 is that a tenant who continues to occupy his holding for twelve years without failing to pay a fair rent for it should not be liable to ejectment as long as he continues to fulfil his obligations as a tenant. It is inequitable that a tenant by assenting to an exchange of land, made possibly to suit the convenience of the landholder only, should thereby forfeit his inchoate right to a fixity of tenure. As regards nominal ejectments, it is at least arguable that if a tenant is not actually ejected from any land and is permitted to cultivate it continuously in spite of an order for ejectment which is never actually enforced, his occupation is continuous.

"The present law then being defective, in that it allows a tenant's claim to a right of occupancy to be defeated by these devices contrary to the spirit of the Act, sections 11 to 14 of the Bill as they originally stood were drafted to remove this defect. So far as their provisions are limited to this result, no reasonable objections have been urged against them. But it has been objected with great insistence—and we have felt that there is justification for the complaint—that these provisions go further, and that they would enable tenants to acquire a right of occupancy not only in land in which they might fairly claim such a right, but in other land to which they could have no such claim. A tenant who has been allowed to hold the same land for twelve years undisturbed has no claim to a right of occupancy in any other land added to his holding within that period. A tenant whose land has been shifted is entitled to an equivalent for the land he gives up, but not to land which he has received within twelve years in excess of such equivalent. It was therefore recognized by us that some modi-

fication was necessary in these sections to restrict the right of occupancy to such land as had either been held for twelve years, or had been given the tenant in lieu of it, or any portion of it, but not to allow it in any land received in addition thereto.

"Various proposals made with the view of attaining this object were laid before us, and were carefully considered. Amongst other alternatives we were invited to consider whether it would be possible to secure the object in view by retaining the main provisions of Act XII of 1881 regarding the acquisition of occupancy rights, and adding provisions to the effect that, when a tenant holding any land from a landholder ceases to hold that land and thereupon commences to hold other land of the same landholder under circumstances from which it may be inferred that the tenant has accepted that other land in lieu of the land which he has ceased to hold, he shall, for the purposes of section 8, Act XII of 1881, be deemed to have held that other land from the time at which he commenced to hold the land which he has ceased to hold ; and our attention was called to the provisions of section 54 of the Central Provinces Tenancy Act, 1898, and section 7 of the Panjab Tenancy Act, 1887.

"Sections 11 to 14 as redrafted embody the result of our conclusions, and we trust they will be found to secure both to the tenant and the landholder their just rights. When considering the advisability of adopting provisions similar to those in section 54 of the Central Provinces Tenancy Act and section 7 of the Panjáb Tenancy Act, we felt that they would impose on the Courts the difficult task of determining in every case of shifting of fields, whether the shifting was an exchange or not, and would leave the Courts too wide a discretion in the decision of this issue. We consider that, when a tenant gives up land and receives other land in lieu of it equal in value, it should be conclusively presumed that the parties regarded this transaction as an exchange ; and that if the land received by the tenant exceeds in value that which he has given up, it should be conclusively presumed that so much of the land given to the tenant as is equal in value to the land given up by him, is given to him in exchange for the land he gives up, and that the remainder should be regarded as an addition to the holding. In the latter of the two cases stated, there would otherwise be danger of a Court concluding that the very fact of the inequality of the lands given and taken precluded the idea of an exchange ; but in our opinion such a conclusion would be unjust to the tenant.

"Under section 13 as now drafted the Courts will be bound to presume that an exchange has taken place in the circumstances indicated, and their functions will be limited to demarcating, if necessary, the area

in which a right of occupancy has accrued from that in which it is not to be allowed. This view has been accepted by the majority of the Committee : the Hon'ble Munshi Madho Lal and Lala Nihal Chand alone dissent ; they would prefer to leave it to the discretion of the Courts in all cases to determine whether an exchange took place or not.

"In order to render the application of the provisions of sub-sections (2) and (3) of section 13 more readily intelligible to the Courts, we have added illustrations explanatory of their working.

"Section 13 of the Bill gave unlimited retrospective effect to the provisions of section 11, and to this objections have been urged not only by the landholders, but also by many of those whose opinions have been laid before us. We have felt that there is force in these objections. We recognise that the expedients adopted hitherto to defeat occupancy rights, though, in our opinion, contrary to the spirit of the law, were warranted by the letter of the law and received the sanction of the Courts, and cannot now be regarded as having been illegal. We also believe that to give complete retrospective effect to these provisions would result in an indefinite and most probably considerable increase in the extent of the occupancy area without an opportunity having been given to the landholders to limit its extent by what is now declared to be a legitimate method of preventing the accrual of occupancy rights, *viz.*, the granting of seven years' leases. At the same time we consider that there is an essential difference between the shiftings and nominal ejectments carried out before the landholders were aware of any intention to amend the law and those which have been effected within the last year, and that the principle, on which it is provided by section 207 (1) of the Bill (section 2A in the amended Bill) that contracts entered into since 1st April 1900 with the object of defeating the provisions of the Bill, should have no effect in taking away or limiting the rights of tenants under the Bill, is equally applicable to shiftings and nominal ejectments made since the beginning of the current agricultural year. The majority of the Committee find themselves forced to the conclusion that the large number of notices of ejectment issued this year have been issued solely to evade and defeat the present legislation, and do not deserve any consideration as *bona fide* proceedings under the existing law. We have therefore provided in section 13A that the provisions of sections 12 and 13 shall have retrospective effect to 1st July 1900, but not earlier—a decision from which the Hon'ble Munshi Madho Lal and Lala Nihal Chand are the only dissentients.

"We have alluded to the defect in the existing law by which any lease, however short, prevents the acquisition of a right of occupancy. The

argument that a tenant has his compensation in a certain fixity of tenure is of no force when the term of the lease is too short to allow any real permanency of tenure. The second paragraph of section 11 of the Bill allows no lease entered into hereafter to affect the continuity of the tenant's occupation unless it be for seven years. In the opinion of the majority of the Committee a term of seven years is the shortest term that would be of any real benefit to the tenant. This is the term for which all tenants are maintained in their holdings by the Oudh Rent Act, and we do not think that a lease for any shorter term should be allowed to defeat a right of occupancy. The Hon'ble Munshi Madho Lal and Lala Nihal Chand consider that a term of five years would be sufficient, but in this view the remainder of the Committee are unable to concur."

12. For the purposes of section 11 it is immaterial whether the period of twelve years began before or after the commencement of this Act :

Time from which period of twelve years begins to run.

Provided that when previous to the commencement of this Act a tenant was holding, or at the commencement of this Act is holding, under a written lease for a definite term,

or when, in any case, a tenant is holding as specified in clause *(a)*, *(b)*, or *(c)* of section 11,

the period of twelve years shall begin to run from the expiry of such term, or when he ceases to so hold.

This section is altogether new.

See report of the Select Committee given under sec. 11.

Proviso :—If a tenant is holding under a written lease given after the 1st April, 1900, for a term of less than seven years, the period of twelve years will begin to run from the date of such lease and not from the expiry of the term of such lease, as under sec. 3 (2) (*a*) "nothing in any lease granted on or after the 1st day of April, 1900, shall prevent the tenant from acquiring a right of occupancy in land in accordance with the provisions of this Act."

'When he ceases so to hold' :—These words refer to clauses (*b*) and (*c*) of sec. 11.

If a tenant has sub-let, and the interest of such tenant is extinguished before the expiry of the sub-lease the sub-tenant will become, under sec. 28, the tenant of the landholder from the date of such extinction of

the tenant's interests. But it will be a question whether in such a case the sub-tenant would acquire occupancy rights from the date on which the term of his sub-lease expires, or from the date on which the interest of the tenant is extinguished and the sub-tenant becomes the tenant of the landholder. This question does not arise under sec. 29, for under that section it is entirely at the option of the tenant's landholder to treat the sub-tenant as his tenant or to eject him when the interest of the tenant is extinguished before the expiry of the sub-lease, so that the former sub-tenant would begin to acquire occupancy rights from the date the landholder binds himself with the covenants enforceable as between the tenant and the sub-tenant. But as under sec. 28 the landholder does not treat the sub-tenant as his tenant out of his own free will and accord, but merely by operation of law, and cannot eject the new tenant (formerly sub-tenant) during the period of the sub-lease, it seems that such new tenant should not begin to acquire occupancy rights from the date the landholder is made to treat all covenants binding and enforceable as between the tenant and the sub-tenant as binding and enforceable between himself and the sub-tenant. But the words used in this section are "when he ceases so to hold," which show that the new tenant would begin to acquire occupancy rights from the date on which he lost his position as sub-tenant and began to be treated by the landholder as his tenant.

"Continuous holding" explained.

13. For the purposes of section 11 a tenant shall be deemed to have held continuously—

(*a*) though he may have been wrongfully dispossessed by his landholder, or have been ejected under a decree or order of a Court, which has been finally set aside in appeal or otherwise,

if he has been reinstated in the land, or otherwise regained possession thereof; or

(*b*) though he may have been ejected from the land under section 40 of Act XII of 1881, or clause (*a*) or (*b*) of section 58 of this Act,

if within a year from the date of such ejectment

he has been readmitted by his landholder to the tenancy of the land from which he has been so ejected ; or

(*c*) though he may have surrendered the land upon agreement, express or implied, to take other land,

if within a year from the date of such surrender, not having received such other land, he has been readmitted by his landholder to the tenancy of the land so surrendered ; or

(*d*) though he may have lost possession of the land,

if he has been admitted to the tenancy of other land under the circumstances specified in the next following section.

This section is altogether new. See report of the Select Committee given under sec. 11.

'**Tenant**' :—see sec. 4 (5) and notes thereunder.

Clause (a) :—

'**Has been reinstated or otherwise regained possession**' :—Though a definite period of one year is provided for clauses (*b*), (*c*) and (*d*), no period of limitation is given in the Act within which a tenant should be reinstated in the land or should regain possession thereof. As the period of limitation prescribed for a suit to regain possession of a holding from which a tenant has been wrongfully ejected is six months (see fourth Schedule, Group C, serial No. 30), it appears that if a tenant is not reinstated in the land or does not otherwise regain possession of it within six months from the date of wrongful dispossession, any rights which he might have acquired in the land by his previous occupation would be extinguished. The ruling in *Dalip Rai* v. *Deoki Rai*, (W. N, 1898, p. 116), supports the above view. In that case certain tenants were dispossessed by their zamindars, as they alleged, wrongfully. The dispossessed tenants did not avail themselves of the remedy provided by sec. 95 (n), Act XII of 1881 ; but some time after the expiry of the period of limitation for an application under that section, they dispossessed the zamindars, who had meanwhile taken the land in suit into their own cultivation. The zamindars thereupon sued

in the Civil Court for the ejectment of the former tenants as trespassers. *Held*, that the defendants could not set up in answer to this suit their status as tenants, which they had lost by not availing themselves within limitation of the means provided by sec. 95 (n), Act XII of 1881, to contest their own ejectment.

Clause (b):—Notwithstanding the provisions of this clause, if the period of twelve years began before the first day of July, 1900, nothing in this clause shall be deemed to apply before that date (sec. 15).

'Landholder':—Under sec. 4 (1) 'landholder' would include the successor in interest of the landholder. If, therefore, a landholder ejects a tenant from his holding and within a year from the date of such ejectment his successor in interest re-admits the tenant to the tenancy of the land from which he has been ejected, the tenant will be deemed to have held continuously.

Clause (c):—Nothwithstanding the provisions of this clause, if the period of twelve years began before the first day of July, 1900, nothing in this clause shall be deemed to apply before that date (sec. 15).

'Landholder':—would include the successor in interest of the landholder [sec. 4 (1)].

Clause (d):—Notwithstanding the provisions of this clause, if the period of twelve years began before the first day of July, 1900, nothing in this clause, shall be deemed to apply before that date (sec. 15).

'Other land':—See under sec. 14.

"Same land" explained.

14. (1) If a tenant has lost possession of any land, whether—

(*a*) by wrongful dispossession therefrom; or

(*b*) by a decree or order of a Court, which has been finally set aside in appeal, or otherwise; or

(*c*) by ejectment under section 40 of Act XII of 1881, or clause (*a*) or (*b*) of section 58 of this Act; or

(*d*) by surrender thereof upon agreement, express or implied, to take other land;

and within a year from the date of such loss of possession has been admitted by his landholder to the tenancy of any other land, whether in the same village or not,

such other land shall, if the letting value thereof does not exceed that of the land of which the tenant has so lost possession, be deemed to have been received in exchange therefor, and for the purposes of section 11 to be the same land as the land which he held before such exchange.

(2) If the letting value of the land to the tenancy of which the tenant has been so admitted by his landholder exceeds that of the land of which the tenant has lost possession, an area of the former land having a letting value equal to that of the latter shall be deemed to have been received in exchange therefor, and to be the same land for the purposes of section 11.

(3) If any question arises under sub-section (2) as to the specific area in which a right of occupancy has accrued, the Court shall demarcate an area, as approximately equal in letting value as may be to the land previously held by the tenant, and declare such area to be the land received in exchange therefor:

Provided that, if there has been more than one such loss of possession of land and admission to the tenancy of other land during the period of twelve years, it shall be sufficient if the Court demarcates out of the aggregate area of the land to the tenancy of which the tenant has been admitted an area, as compact as possible, and as approximately equal in letting value as may be to the aggregate area of the land previously held by him.

(4) When an area is demarcated under sub-section (3), the Court shall, if necessary, distribute the rent of the holding accordingly.

Illustrations.

(*a*) A tenant lost possession of field A, in the manner specified in clause (*a*), (*b*), (*c*), or (*d*) of section 14 (1), and was within a year admitted to the tenancy of field X, and is holding the same at the time of the inquiry into the tenant's claim to a right of occupancy. If the letting value of X does not exceed the letting value of A, X shall be deemed to have been received in exchange for A, and for the purposes of section 11 to be the same land as A.

(*b*) If in the circumstances stated in illustration (*a*) the letting value of field X exceeds that of field A, an area of X having a letting value equal to that of A shall be deemed to have been received in exchange for A, and to be the same land as A, and the Court shall demarcate a specific area of X equal in letting value to A, and the tenant shall have a right of occupancy in such area.

(*c*) A tenant lost possession of field A, in the manner specified in section 14 (1), and within a year was admitted to the tenancy of field X; he subsequently so lost possession of X and within a year was admitted to the tenancy of Y. The Court shall demarcate an area from Y equal in letting value to A, or X, whichever has the lesser letting value.

(*d*) A tenant lost possession at various times of fields A, B, and C, in the manner specified in clause (*a*), (*b*), (*c*) or (*d*) of section 14 (1), and within one year of losing each field, was admitted to the tenancy of fields X, Y, and Z respectively, the letting values of which are not less than those of A, B, and C respectively, and is holding X, Y, and Z at the time of the inquiry. It shall be sufficient if the Court demarcates out of fields X, Y, and Z an area as compact as possible and as approximately equal in letting value as may be to the aggregate area of fields A, B, and C; and it shall not be necessary to demarcate separate areas out of X, Y, and Z equal in letting value to A, B, and C respectively.

This section is altogether new. See report of the Select Committee given under sec. 11.

Sub-section (1) :—

Clause (b) :—See section 15 in connection with this clause.

Clause (c) :—See sec. 15 in connection with this clause.

Clause (d) :—See sec. 15 in connection with this clause.

'Other land' :—The other land in order to be the "same land" must be of such a nature that occupancy rights can be acquired in it. If, therefore, the other land given to the tenant is *sír* land, it would not be the "same land" within the meaning of this section, for under sec. 11 a tenant cannot acquire occupancy rights in *sír* land. The

provisions of sec. 17 would not apply to such a case, for that section refers only to the change of the holding of a tenant who has already acquired occupancy rights.

Sub-Section (3), Proviso :—Reading the proviso with illustration (c), it would appear that if there have been more than two exchanges the Court should demarcate out of the aggregate area of the land to the tenancy of which the tenant has been admitted an area as approximately equal in letting value as may be to the aggregate area of the land previously held by him, whichever has the least letting value. A tenant, for instance, lost possession of field A whose letting value is ten rupees, and within a year was admitted to the tenancy of field B whose letting value is eight rupees ; he subsequently lost possession of B and within a year was admitted to the tenancy of field C whose letting value is fifteen rupees ; subsequently again he lost possession of C and within a year was admitted to the tenancy of field D whose letting value is twelve rupees. Under this proviso the Court should demarcate an area from D equal in letting value to B which has the least letting value *i.e.*, 8 Rs.

'**Aggregate area of the land previously held by him**' :—does not mean the aggregate area of all the lands held by the tenant during the twelve years, but it means the aggregate area of the land held by him at the time of each exchange.

Retrospective effect of certain provisions barred before July 1900.

15. Notwithstanding anything hereinbefore contained, if the period of twelve years began before the first day of July, 1900, nothing in clauses (*b*), (*c*), and (*d*) of section 13, or in section 14, shall be deemed to apply before that date.

This section is new.

Occupancy tenants.

16. Every tenant having a right of occupancy under section 11, or under the corresponding provisions of Act X of 1859, Act XVIII of 1873, or Act XII of 1881, or under any other enactment for the time being in force, shall be called an occupancy tenant, and shall have all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act.

The occupancy right of a tenant cannot be lost except under the provisions of secs. 17, 18 and 57.

Right in changed holdings.

17. Notwithstanding anything in clause (*d*) of section 11, a tenant who has a right of occupancy in any land shall have a right of occupancy in any other land which he may receive from the proprietor in exchange therefor, and shall thereupon cease to have a right of occupancy in the land so given by him in exchange.

This section is altogether new.

'Any other land':—The Select Committee in their report printed at p. 55 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say:—"It is necessary to exclude the operation of sec. 11 (1) (*d*) in order to secure to the tenant a right of occupancy in any sir land the landholder may give him in exchange for the land he gives up." But this section is not limited in application to the case when sir land only is given in exchange for any land in which a tenant has acquired occupancy rights; but it is of general application whether the land given in exchange be sir land or any other sort of land.

'Proprietor':—The term "proprietor" is here more appropriate than "landholder," as it is only the landholder who is also a proprietor who can be concerned in such an exchange. (Vide report of the Select Committee printed at p. 55 of the N.-W. P. and O. Gazette, dated 22nd June, 1901.)

Extinction of occupancy right.

18. A right of occupancy shall be extinguished—

(*a*) when the tenant dies leaving no heir entitled under this Act to inherit it;

(*b*) in land from which the tenant has been ejected in execution of a decree or order of a Court;

(*c*) in a holding, which the tenant has abandoned, or surrendered after service upon the landholder of a notice of surrender;

(*d*) in land which has been acquired for a public purpose, or a work of public utility.

This section is altogether new.

See secs. 28 and 29 in connection with this section.

Clause (a) :—

'Heir' :—See sec. 22.

When a tenant dies, the house left unoccupied by him lapses to the landlord in the absence of heirs or other lawful assignees of the last occupant (*Chajju Singh* v. *Kanhia*, W. N , 1881, p. 114).

Clause (c) :—

Abandonment of holding :—See sec. 87.

Surrender of holding :—See sec. 83.

When land, in which occupancy rights have already accrued, is submerged for some years on account of fluvial action, and afterwards exposed again, occupancy rights are not forfeited, provided it can be shewn that the newly formed land is identical in site with that in which occupancy rights had previously been acquired (*Todar Ahir* v. *Mohan Singh*, 2 L. R., R. R. S., 65 ; *Kirpal Rai* v. *Radha Prasad Singh*, W. N., 1883, p. 14). If a tenant is dispossessed of his occupancy holding and does not sue for recovery of its possession within the period of limitation his right of occupancy in such holding will be extinguished (*Dalip Rai* v. *Deoki Rai*, W. N., 1898, p. 116).

The Bill as originally drafted, printed in the N-W. P. and O. Gazette, dated 17th November, 1900, contained a clause (*d*) which ran as follows :—"When the tenant has become by succession or transfer a proprietor in the mahal or patti, as the case may be, in which the holding or any portion thereof lies, to the extent to which the holding is included in such mahal or patti." But the Select Committee omitted this clause with the following remarks :—"We have omitted clause (d) which we are unable to accept as a correct statement of the law on the subject, and it is not understood that any change in the existing law is desired or contemplated".

This section as originally drafted, printed in the N.-W.-P. and O. Gazette, dated 17th November, 1900, contained also a sub-section (2) which ran as follows :—

"A tenant's rights of occupancy shall not be deemed to have been extinguished by his becoming a mortgagee, thekadar, or farmer of any area in which his holding is in whole or part comprised or included ; but nothing in this section shall be deemed to confer upon him in respect of such mortgage, theka, or farm any other rights than he holds under the terms of his mortgage or lease." But the Select Committee omitted that sub-section also with the following remarks :—"We have also omitted sub-section (2), the first portion of which appears to us to have been necessitated only by clause (*d*), which we have omitted, and which lays

down two propositions of common law as to which there cannot be any dispute."

Non-occupancy Tenants.

Non-occupancy tenants.

19. All tenants other than permanent tenure-holders, fixed-rate tenants, ex-proprietary tenants, or occupancy tenants, are non-occupancy tenants.

'**Permanent tenure holders**' :—See sec. 7.

'**Fixed-rate tenants**' :—See sec. 8.

'**Ex-proprietary tenants**' :—See sec. 10.

'**Occupancy tenants**' :—See sec. 11.

Sub-tenants :—A sub-tenant is always a non-occupancy tenant, for under sec. 11 he cannot acquire occupancy rights.

Thekadars :—A thekadar is also a non-occupancy tenant, for he cannot acquire occupancy rights under sec. 11.

Tenants in Sir land :—are also non-occupancy tenants, for they cannot acquire occupancy rights under sec. 11. But see sec. 17.

CHAPTER III.

DEVOLUTION, TRANSFER, AND DIVISION OF TENANCIES.

Succession to, and transfer of, Tenancies.

Rights of transfer and succession.

20. (1) The interest of a permanent tenure-holder or a fixed-rate tenant is a heritable and transferable interest.

(2) The interest of an ex-proprietary tenant, an occupancy tenant, or a non-occupancy tenant other than a thekadár, is, subject to the provisions of this Act, heritable, but is not transferable in execution of a decree of a Civil or Revenue Court, or otherwise than by voluntary transfer between persons in favour of whom as co-sharers in the tenancy such right originally arose, or who have become by succession co-sharers therein.

(3) The interest of a thekadár is, subject to the terms of his lease, heritable, but not transferable.

This section corresponds to sec. 9 of Act XII of 1881.

Sub-section (1):—It appears that the law of inheritance and transfer applicable to permanent tenure-holders and fixed-rate tenants is the ordinary law to which such tenant is subject.

'**Heritable**':—A legal heir cannot transfer his right of inheritance to the tenant-right to another relative or confer on him such a right by consenting to his occupation of the land (*Omrao Singh* v. *Pertab*, 3 Agra, 143). Conditions in village administration papers, purporting to interfere with or alter the ordinary rules of descent, will not be enforced. The law of inheritance, whether Hindu or Mohamedan, is a part of the law of this country, and as such over-rides the provisions of a

document which was not designed to record more than the rights of the village community (*Sarupi* v. *Mukh Ram*, 2 N.-W. P., 227). If a person not strictly entitled to succeed by a right of inheritance, does succeed to the holding by the consent of the zemindar, the succession may be taken to be legal (*Hukeem-oon-nisa* v. *Bhooria*, 5 N.-W. P., 23; *Brijbhookun* v. *Bhyrow Dutt*, 3 Agra, 240).

'**Transferable**':—Where a tenant is competent under the law to transfer his holding, the landlord's recognition of or consent to the transaction is not required (*Altaf Hussain* v. *Dulla Ram*, 3 L. R., H. C .S., 131). There is sufficient privity of estate between the purchaser of a rent paying holding and the zemindar to entitle the latter to claim rent (*Koloo Misr* v. *Bhyro Kulwar*, 2 N.-W. P., 258). The person into whose hands a transferable tenure comes is bound to pay rent to the landlord, unless kept out of possession and enjoyment by the fault of the landlord (*Gobind Chunder Chunder* v. *Kristo Kanto Dutt*, 14 W. R., 273).

Sub-section (2):—

'**Non-occupancy tenant**':—Section 9 of Act XII of 1881 did not include non-occupancy tenant. The Select Committee in their report printed at p. 56 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say:—

"The other important change is the inclusion of non-occupancy tenants in this sub-section. The interest of a non-occupancy tenant, limited though it is, is heritable and transferable amongst co-sharers. But, in the absence of any specific provision in the present rent law, the right to inherit such an interest is now governed by the general law of inheritance. Theoretically, then, if, for instance, the non-occupancy tenant is a Muhammadan, the heirs to his interest would be the heirs by that law. Practically the only person who succeeds to the holding of a non-occupancy tenant is his son, or a brother, or a co-sharer in the holding. The principle on which the right to inherit the interest of an occupancy or non-occupancy tenant is based, is the same in both cases; and we have therefore limited, in accordance with existing custom, the right to inherit the interest of a non-occupancy tenant, to the same persons as would inherit from an occupancy tenant. This of course does not add to the extent of the interest of a non-occupancy tenant."

In the absence of any special evidence to the contrary, the fact of a person holding land under what is known as a "mukaddami" tenure does not imply that the mukaddam has any heritable or transferable interest in the tenement (*Bhagwati Prasad* v. *Hanuman Prasad Singh*, W. N., 1900, p. 197).

'Other than a thekadar':—As a thekadar also is a non-occupancy tenant, he has been excluded from this sub-section, because there is a special provision for him in sub-section (3).

'Heritable':—See under sub-section (1).

Liability of heirs:—The interests of the tenants mentioned in this sub-section are heritable subject to the liabilities of the tenancy. In *Lekhraj Singh* v. *Rai Singh*, (W. N., 1892, p. 143), it was held that an occupancy tenant in possession who has accepted the occupancy holding is liable to be sued for arrears of rent not barred by limitation which accrued in the life time of the person from whom the right of occupancy has devolved upon him. Under sec. 57 (*a*) the heir may be ejected from the holding on account of a decree against the deceased tenant for arrears of rent in respect of that holding on account of any agricultural year, which remains unsatisfied at the expiry of that year.

'Is not transferable':—See notes on "shall not be competent to transfer" under sec. 21.

'In execution of a decree':—A, an occupancy tenant to whom the second and third paragraphs of sec. 9 of Act XII of 1881 (corresponding to this section) applied, gave a simple mortgage of his occupancy holding to one S. During the continuance of the mortgage A died, and his sons surrendered the occupancy holding to the zemindar. S then brought a suit for sale on his mortgage, obtained a decree, had the mortgaged property sold and purchased it himself. On suit by the zemindar, who had not been made a party to any of the previous proceedings, against S, for recovery of the holding, it was held that S took nothing by the purchase under the decree obtained as above described and that the zemindar was entitled to recover (*Sukru* v. *Tafazzul Husain Khan*, I. L. R., 16 All., 398; W. N., 1894, p. 130).

'Co-sharers in the tenancy':—Act XII of 1881 did not contain the words "in the tenancy" after "co-sharers." The words "in the tenancy" have been added to make it clear that reference is not made to 'co-sharers' in the ordinary sense. (Vide Report of the Select Committee printed at p. 56 of the N.-W. P. and O. Gazette, dated 22nd June, 1901).

'By succession':—See sec. 22. The rights of a person who has already succeeded to a tenancy under Act XII of 1881 will not be affected by sec. 22 of this Act. [See sec. 2 (4)].

Sub-section (3):—The Select Committee in their report printed at p. 56 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say:—"In sub-section (3) we have dealt with the case of thekadars, who are

technically non-occupancy tenants, but whose interests are not heritable or transferable unless it is so provided by the contract under which they hold."

Rights in non-transferable tenancies.

21. Where the interest of a tenant is not transferable, he shall not be competent to transfer his holding or any portion thereof, otherwise than by sub-lease as hereinafter provided.

This section is new and does not relate to permanent tenure-holders and fixed-rate tenants, as their interests are transferable (sec. 20). This section is applicable to ex-proprietary, occupancy and non-occupancy tenants and to thekadars, whose interests are not transferable.

'Shall not be competent to transfer':—Where a tenant not entitled to transfer sold his holding, and the landholder brought a suit against the vendee for damages for the period he was in possession under the sale-deed, it was held that whatever the landholder's rights may be against the vendor he could not sue the vendee for damages, *i. e.* for the profits resulting to him from the cultivation of the land during the period of his wrongful possession (*Banno Bibi* v. *Mathura Singh*, W. N., 1886, p. 72). An occupancy tenant having hypothecated his holding, the mortgagee sued to enforce the mortgage and obtained a decree, in execution whereof the holding was sold. Subsequently the landholder brought a suit in which he prayed for a declaration that the mortgage, decree and sale were invalid, and for the ejectment of the purchaser. It was held that the landholder was entitled to a decree for possession (*Mulchand* v. *Bhup Indra Narain Singh*, W. N., 1890, p. 69). The Court executing a decree for enforcement of hypothecation of a holding which is illegal, is not competent to entertain an objection that the property ordered by the decree to be sold is not legally transferable (*Bisheshar Rai* v. *Sukhdeo Rai*, W. N., 1888, p. 41). Where an occupancy holding was mortgaged under two successive mortgage deeds to different parties, and the mortgagees under the first mortgage having been put in possession, and the mortgagees under the second mortgage sued to eject them, it was held that both parties being wrong-doers, in as much as both mortgages were illegal, the defendants, who were in possession, had a right, as against the plaintiffs, to retain possession (*Usaf Khan* v. *Sarvan*, I. L. R., 13 All., 403; W. N., 1891, p. 141). Where A mortgaged his occupancy holding to B and, afterwards, sold the equity of redemption to C, it was held that a suit by C for the redemption of the mortgage did not lie, as C had acquired no rights

under the sale-deed (*Bishen Chund* v. *Beni Prasad*, W. N., 1886, p. 148). Where rent is recovered by the landlord from the transferee of a holding the transfer of which is invalid, such receipt acts as a full and complete acknowledgment by the landlord that he accepts the new tenant in the place of the old one (*Allender* v. *Dwarkanath Roy*, 15 W. R., 320; *Shaikh Ameen Buksh* v. *Bhyro Mundul*, 22 W. R., 493; *Raghubar Singh* v. *Kedar Nath*, W. N., 1892, p. 107; *Kidar Nath* v. *Raghubar Singh*, S. D. B. R., No. 2 of 1888). Where an occupancy tenant sold his occupancy rights and it was found that the zemindars had consented to the sale to the vendees and received from them arrears of rent due on the holding by the vendor, and had recognised them as tenants, it was held that a tenancy was thereby constituted under the Rent Law; that the vendees were therefore not trespassers; and that therefore the question as to ejectment did not fall within the jurisdiction of the Civil Court (*Jhinguri Tewari* v. *Durga*, I. L. R., 7 All., 878; W. N., 1885, p. 260). The transferee of a holding whose transfer is invalid, if recognized by the londholder as a tenant would be merely a tenant-at-will and would not by such a transfer acquire occupancy rights (*Jagannath Prasad* v. *Sadho*, W. N., 1882, p. 54; *Kripa Nath Chakee* v. *Dyal Chand Pal*, 22 W. R., 169.) The transfer of ex-proprietary rights being illegal, no pre-emption can be brought in respect of such a transfer (*Parshad Singh* v. *Sadhari Lal*, W. N., 1885, p. 220). An occupancy tenant cannot transfer by gift his right of occupancy (*Ram Dyal* v. *Narotam*, S. D. B. R., No. 8 of 1888). The distinct admission of occupancy right and consent to its sale in execution of a decree on the part of the landholder would estop him from issuing a notice of ejectment under sec. 36, Act XII of 1881 (corresponding to sec. 58 of this Act) against the purchaser of the holding (*Dharajit* v. *Bhajan Lall*, S. D. B. R., No. 14, of 1893). A relinquishment by an occupancy tenant of his holding was held not to be a 'transfer' within the meaning of sec. 9 of Act XII of 1881 (*Lalji* v. *Nuran*, I. L. R., 5 All., 103; W. N., 1882, p. 196). When a non-transferable holding is sold by a tenant, he is estopped from setting up the invalidity of the sale by him (*Bhagirath Chang* v. *Hafizudin*, 4 C. W. N., 679).

Transfer of trees:—The trees upon an occupancy holding, whether planted by the tenant himself or not, belong and attach to such holding, and, like it, are not susceptible of transfer by the tenant (*Imdad Khatun* v. *Bhagirath*, I. L. R., 10 All., 159; W. N., 1888, p. 32). Property in trees growing on a tenant's holding is, by the general law, vested in the zemindar, and a tenant is not entitled, in the absence of special custom, the burden of proving which is on him, to sell such trees (*Kausalia* v. *Gulab Kuar*, I. L. R., 21 All., 297; W. N., 1889, p. 72). When a tenant,

either occupancy or at will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring it (*Janki* v. *Sheoadhar*, I. L. R., 23 All., 211 ; W. N., 1901, p. 25). The fact that a piece of land forming a portion of an occupancy holding had with the permission of the zemindars been converted into a "bagh," or grove, by the tenants, did not exempt such piece of land from the usual incidents of occupancy tenure amongst which were the restrictions upon alienation (*Nawal Gobind Rai* v. *Ganesh Gobind Rai*, W. N., 1899, p. 25).

Transfer of houses :—A tenant who has built a house on the zemindar's land with the zemindar's consent is not entitled to sell or mortgage the house so as to pass any right in the site thereof. His right to occupy the site is purely personal, and his power to sell or mortgage extends only to the materials out of which the house is constructed (*Amir Begam* v. *Balak Ram*, W. N., 1900, p. 182). The purchaser of a house at a sale in execution of a money decree against a tenant, on attempting to put the same in repair, and to rebuild a part of it which had fallen down, was resisted by the landholder, who alleged that the occupier was entitled only to the materials existing at the time of the sale and to occupy the house as it then stood, and not to repair or renew it. *Held* that the occupier as owner of the house was entitled to keep it in good repair and to possess it as long as it maintained the character of a habitation, and that although when it had fallen into ruins the landholder would be entitled to enter into possession of the land, he could not take any action to accelerate the house falling into ruins (*Narain Prasad* v. *Dammar*, W. N., 1888, p. 125). According to the general custom prevalent in the N.-W. P., a person, agriculturist or agricultural tenant, who is allowed by a zemindar to build a house for his occupation in the *abadi*, obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house, that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the *abadi* occupying under the zemindar, he has, unless he has obtained by special grant from the zemindar an interest which he can sell, no interest which he can sell by private sale or which can be sold in execution of a decree against him, except his interest in the timber, roofing and wood work of the house (*Sri Girdhariji Maharaj* v. *Chote Lal*, I. L. R., 20 All., 248 ; W. N., 1898, p. 27). A house left unoccupied by a tenant lapses to the landlord in the absence of heirs or other lawful assignees of the last occupant (*Chajju Singh* v. *Kanhia*, W. N., 1881, p, 114).

Usufructuary mortgage of holding :—Under Act XII of 1881 it was held in *Khiali Ram* v. *Nathu Lal*, (I. L. R., 15 All., 219 ; W. N., 1893, p. 125), that usufructuary mortgage by an occupancy tenant of his holding stands on the same footing as a sub-lease and is therefore valid ; and in *Kesho Tiwari* v. *Babu Lal Tiwari*, (S. D. B. R., No. 2 of 1897), it was held that although mortgage of an occupancy holding is an invalid contract and cannot properly be recognized by a Rent Court, nevertheless in cases of usufructuary mortgage where the mortgagee is the *de facto* occupant of the holding, it is necessary to treat him as a sub-tenant. The second draft Bill also as published in the N.-W. P. and O. Gazette, dated 22nd June, 1901, made usufructuary mortgages valid. But the words 'usufructuary mortgage' have now been omitted from this section. It is therefore apparent that amongst the restrictions to alienations under this section usufructuary mortgages are also included and the intention of the legislature appears to be that usufructuary mortgages do not stand on the same footing as sub-leases and that they are therefore invalid.

'As hereinafter provided' :—See secs. 23 to 26.

As to 'remedies against illegal sub-leases and other transfers' see sec. 31.

Succession to tenancies.

22. When an ex-proprietary tenant, an occupancy tenant, or a non-occupancy tenant (other than a thekadár) dies, his interest in the holding shall devolve as follows:—

(*a*) on his male lineal descendants in the male line of descent; and

(*b*) failing such descendants, on his widow till her death or re-marriage; and

(*c*) failing such descendants and widow, on his brother, being a son of the same father as the deceased ;

and failing any such heirs as above mentioned,

(*d*) on his daughter's son ; and

(*e*) failing such daughter's son, on the nearest collateral male relative in the male line of descent :

Provided that no such daughter's son or collateral relative shall be entitled to inherit who did not share in the cultivation of the holding at the time of the tenant's death.

This section is altogther new and corresponds to sec. 59 of the Punjab Tenancy Act.

See in connection with this section notes on "Heritable" under sec. 20 (1).

The interest of a tenant in his holding cannot devolve upon his heirs during his lifetime (*Baihu* v. *Diwan*, S. D. B. R., No. 1 of 1888).

The proprietor of the lands on which trees stand, is, in default of heirs, entitled to proprietary possession of trees as 'lawarisee' which had been planted by the deceased ryot (*Bhairow Deen* v. *Mookta Ram*, 1 Agra, 13).

Liability of heirs:—See under sec. 20 (2).

Failure of heirs extinguishes occupancy rights :—When an occupancy tenant or an ex-proprietary tenant dies, leaving no heir entitled under this section to succeed him, the right of occupancy is extingnished [sec. 18 (*a*)].

Succession in joint tenancy :—In a *mauroosi* holding held by more than one person jointly, on the death of any one of them, his rights pass by survivorship to the others. In reality, by the death of one of such holders, the tenant of the holding is not dead so as to open out succession, the tenant surviving in the remaining holders (C. J., No. 4, P. R., 1880; C. J., No. 36, P. R., 1870; C. J., No. 57, P. R., 1868; C. J., No. 180, P. R., 1882). In a case where two widows were joint tenants of an undivided holding and one dies, the survivor is entitled to occupancy rights in the whole (R. J., No., 9, P. R., 1891). In C. J., No. 56, P. R., 1891, it was held that in a joint tenancy each tenant is the heir of the other to the exclusion of other heirs ; but this ruling has been overruled by a Full bench decision (C. J., No. 109, P. R., 1894) in which it was held that the principle of survivorship among joint tenants of an occupancy holding cannot be extended to the case of an heir, either lineal or collateral, claiming a share in an ancestral holding which has fallen in on the death of one of the tenants, even though the deceased was joint in cultivation with some of the family other than the claimant who was separate.

If a tenant dies leaving, for instance, two sons and three grandsons by a deceased son, the interest of the deceased tenant will devolve on his two sons and three grandsons jointly and they will be joint tenants of

the holding. The Revenue Courts will have nothing to do with deciding as to the shares of each.

If out of several persons succeeding to the interest of a deceased tenant one is deprived of his rights and interests in the deceased's holding, it appears that such person can sue in the Civil Court for a declaration of his rights, though he cannot sue for a division of the holding either in a Civil or in a Revenue Court (sec. 32).

Remedy of heir obstructed by Zemindar from succeeding :—When a Zemindar on the death of an occupancy tenant refused to admit his heir to possession of occupancy holding and took possession of it, it was held that the proper remedy of the heir was by application under sec. 95 of Act XII of 1881 (corresponding to sec. 79) and not by a suit in a Civil Court. (*Bani Bai* v. *Parbati*, W. N., 1893, p. 196).

Clause (a) :—

'Male lineal descendants in the male line of descent':—would not include an adopted son. Though sec. 2 (32) of the N.-W. P. and Oudh General Clauses Act I of 1887 provides that "son shall, in the case of any one whose personal law permits adoption, include an adopted son," but the word 'son' is not the word used in this section ; the words here used are 'male lineal descendants in the male line of descent' which must be construed literally. It appears that in dealing with succession among agriculturists, Hindus and Mahomedans, who generally follow custom and not law the legislature has intended to restrict the succession to male lineal descendants in the male line only, in the ordinary sense of the term, without regard to adoption. Clause (*a*) of sec. 59 of the Punjab Tenancy Act is the same as Clause (*a*) of this section, and Sir Meredyth Plowden, in C. J., No. 40, P. R., 1894, was inclined to think that the words 'male lineal descendants' used in sec. 59 of the Punjab Tenancy Act were intended to exclude the succession of an adopted son. He observed :—"The words used are male lineal descendants, if any, in the male line of descent. Now, if A, an occupancy tenant, being sonless, adopts C, the son of B, it is clear that C, the son of B, is not the male lineal descendant of A, in the ordinary sense of the term : he is the male lineal descendant of B. To give this term a more extended meaning, some express provision applicable to sec. 59 seems necessary." Again in C. J., No. 43, P. R., 1895, a Full Bench held that a mere customary adoption whether among Hindus or Mahomedans gives no right of succession under sec. 59 of the Punjab Tenancy Act.

Illegitimate son :—cannot inherit occupancy rights (*Mata Prasad* v. *Bhawar*, S. D. B. R., No. 2 of 1887).

Chelas :—Under sec. 59 of the Punjab Tenancy Act it was held that a *chela* is not a male lineal descendant in the male line of descent

(C. J., No. 22, P. R., 1896). Although the Allahabad High Court has, under the Hindu Law, admitted the right of a disciple to succeed to the effects of an ascetic, a tenant-right of occupancy is on a different footing from property which is exclusively the estate of a deceased ascetic, and the principles which govern the hereditary right of succession to a tenant-right of occupancy are such as an ascetic, if he conform to the spirit of his religion, cannot carry out (*Sooruj Komar Pershad* v. *Mahadeo Dutt*, 5 N.-W. P., 50).

Clause (b) :—

Concubine :– A concubine cannot succeed to the interest of a deceased tenant, though in *Mussammat Sunandi* v. *Harkishen*, (2. L. R., R. R. S., 3), the Board remanded a case for enquiry as to whether a woman who, though not the legal wife of the deceased tenant, was living with him, could by custom succeed to the deceased's interest in his holding.

'Till her death' :—These words show that the widow's interest in the holding is only a life interest and that after her death (or re-marriage) the holding will revert to the heirs of her husband and not to her own heirs. A transfer by a widow in possession of a holding by inheritance, even in accordance with the provisions of this Act, will have effect only till her death or remarriage, if it has been made for a period which expires after her death or remarriage, and under sec. 31 the landholder may sue in the Revenue Court for the cancellation of the same, or for the ejectment of the transferee, or for both. But a suit by the reversioners for the cancellation of such a transfer will lie in the Civil Court.

If, however, a widow is admitted to the tenancy of a holding and is not in possession of it as the heir of her deceased husband, her interest in the holding will not be a life interest, but after her death her interest in the holding will devolve on her heirs under this section and not on the heirs of her deceased husband.

Clause (c) :—

'Being the son of the same father as the deceased' :— A half brother on the mother's side would therefore be included under this clause.

Clause (e) :—

'Collateral relative' :—Consanguinity is of two kinds, lineal and collateral. Lineal consanguinity is that connection or relation which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grand-father, and great-grand-father, and so upwards in the direct ascending line; or between a man, his son, grand-son, great-grand-son, and so downwards in the

direct descending line (sec. 21 of the Indian Succession Act X of 1865). Collateral consanguinity is that connection or relation which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other (sec. 22 of the Indian Succession Act X of 1865).

'In the male line of descent' :—If, therefore, a female intervenes in the line of descent, the persons descending from such female will not be entitled to inherit under this clause.

Proviso :—

'Share in the cultivation of the holding' :—A minor collateral relative of a deceased tenant being a child, could not have shared in the cultivation of the holding at the time of his death and was therefore held not to be entitled to inherit under the last clause of sec. 9 of Act XII of 1881 (*Ram Dyal* v. *Narotam*, S. D. B. R., No. 8 of 1888). A collateral entitled to succeed is one who actually shared in the cultivation of the holding and who is a *bona fide* coadjutor with the deceased in the cultivation, and not a person who was brought by the deceased into his family obviously with no object of deriving assistance from him in the cultivation (*Ram Dyal* v. *Narotam*, S. D. B. R., No. 8 of 1888).

Sub-leases.

Saving of leases by thekadárs.

23. Nothing in sections 24 to 30 shall apply to leases by thekadárs.

'Thekadar' :—See sec. 4 (6)

Leases by a thekadar differ essentially from sub-leases by cultivating tenants, and as under sec. 4 (5) a thekadar also is a tenant, this section has been inserted to make it clear that secs. 24 to 30 relating to sub-leases do not apply to them. (Vide report of the Select Committee printed at p. 57 of the N.-W. P. and O. Gazette, dated 22nd June, 1901.)

Right to sub-let.

24. A tenant may sub-let the whole or any portion of his holding, subject to the restrictions imposed by this Act:

Provided that no such sub-letting shall in any way relieve the tenant of any of his liabilities to his landholder.

This section is altogether new.

'Tenant' :—*i. e.*, all sorts of tenants with the exception of thekadars (see sec. 23).

This section empowers all sorts of tenants with the exception of thekadars to sub-let subject to the restrictions imposed by secs. 25 and 26, but as those sections do not refer to permanent tenure-holders and fixed-rate tenants, and as according to secs. 20 and 21 the interest of a permanent tenure-holder or a fixed rate tenant is transferable in any manner, the restrictions imposed by secs. 25 and 26 would not apply to sub-leases given by such tenants. But under the proviso to this section no sub-letting by any of the tenants mentioned in sec. 6 would in any way relieve such tenant of any of his liabilities to his landholder.

'Subject to the restrictions imposed by this Act' :—Vide secs. 25 and 26.

Sub-leases by ex-proprietary, occupancy, and non-occupancy tenants.

25. (1) No ex-proprietary tenant or occupancy tenant shall sub-let for any term exceeding five years, and shall not again sub-let the whole or any portion of his holding within two years from the expiry of any such sub-lease.

(2) If the sub-lease is for a term exceeding one year, or from year to year, it shall be made by registered instrument only.

(3) No non-occupancy tenant shall sub-let for a term exceeding one year, and shall not again sub-let within three years from the expiry of any such sub-lease.

(4) Nothing in this section shall apply to the holding of a person in the military service of Government, a female, a minor, a lunatic or an idiot.

This section is altogether new and does not apply to thekadars. (See sec. 23).

Sub-leases given in contravention of the provisions of this section are not void *ipso facto*, but they are voidable at the option of the landholder (sec. 31), and they would afford the landholder a ground for the ejectment of the tenant and the sub-lessee [secs. 57(*d*) and 64 (1) (*b*)].

When a tenant has sub-let in contravention of the provisions of this section, his successor in interest will not be bound by the terms of the sub-lease (sec. 27).

A person to whom a sub-lease has been given in contravention of the provisions of this Act will be a 'sub-tenant' all the same within the meaning of sec. 4 (7), for that section does not say that the person holding from a tenant should hold in accordance with the provisions of this Act in order that he may come within the definition of 'sub-tenant.'

Sub-section (1) :—

'For any term exceeding five years' :—The Select Committee in their report printed at p. 57 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"We have carefully considered the maximum term for which sub-leases should be allowed. The limitations which it is necessary to observe are, on the one hand, that the term should be long enough to allow a tenant some means of recovery from the effects of a succession of bad seasons and to give him reasonable credit for the purpose of obtaining necessary advances, and, on the other hand, that the term should not be so long as to allow the tenant's holding virtually to pass into the hands of his creditors for an indefinite period, or to allow of such continuous sub-letting as practically converts the occupancy tenant to a middle-man. It must also be borne in mind that, till now, there has been no restriction on the length of the term for which the occupancy tenant may sub-let ; and it is necessary to be careful lest, by the restrictions now to be imposed for the first time, occupancy tenants should be deprived of the means they at present possess of obtaining funds to assist them in times of difficulty. For these reasons our opinion is that five years is the shortest term that should be fixed."

'Year' :—See sec. 4 (10) and notes thereunder.

'His holding' :—*i. e*, the same holding, the holding which has been first sub-let.

'Within two years from the expiry of any such sub-lease' :—Not within two years from the date on which the tenant regains possession on the expiry of the sub-lease. If, for instance, a tenant has sub-let for five years, and, after the expiry of those five years, the sub-lessee does not surrender or abandon his holding, or the tenant does not sue for his ejectment under sec. 58(*b*), and the sub-lessee continues to remain in occupation of the holding or two years more, and after the expiry of these two years he surrenders the holding to the tenant (his landholder), the tenant can again sub-let immediately after such surrender without waiting for two years from the date of such surrender.

Sub-section (2) :—

'Registered' :—See sec. 4 (11) and notes thereunder.

Where the terms of an agreement to lease have been reduced to writing and the instrument is inadmissible in evidence through neglect

to register, secondary evidence of its contents may not be given (*Ajudhia Parshad* v. *Bhagwan Din*, 2 L. R., R. R. S., 31).

Sub-section (3) :—

'Non-occupancy tenant' :—See sec. 19 and notes thereunder.

A sub-tenant also is a non-occupancy tenant, and therefore this sub-section would apply to him also. But in sec. 26 there is a further provision that a sub-tenant can sub-let only with the written consent of his landholder.

'Shall not again sub-let' :—The words "the whole or any portion of his holding" do not occur in this sub-section after the clause under note, as they do in sub-section (1). This shows that when once a non-occupancy tenant has sub-let, he cannot again sub-let at all within three years from the expiry of such sub-lease, whether the holding to be sub-let the second time be the same as, or different from, that which was first sub-let.

'Within three years from the expiry of any such sub-lease' :—The remarks on 'within two years from the expiry of any such sub-lease' under sub-section (1) apply *mutatis mutandis* to the clause under note.

Sub-section (4) :—

'Female' :—Whether married or not.

'Minor' :—See sec. 4 (13).

'Lunatic or idiot' :—An idiot is a person born without a mind; a lunatic is a person who has lost it (Wharton's Law Lexicon).

Sub-leases given by the persons mentioned in this sub-section need not be registered under the provisions of sub-section (2). But this sub-section does not dispense with registration of sub-leases whose registration s compulsory under the Indian Registration Act III of 1877.

26. No sub-tenant shall sub-let otherwise than with the written consent of his landholder.

Sub-leases by sub-tenants.

This section is altogether new.

As a sub-tenant also is a non-occupancy tenant (see notes to sec. 19) sec. 25 (3) is applicable to sub-tenants also.

'Written' :—would also include "printed" and "lithographed" [sec. 2 (34) of the N.-W.-P. and Oudh General Clauses Act I of 1887].

'Written consent' :—It appears from the word 'written' that the consent must be signed, sealed, or marked by the landholder. 'Signed' includes sealed with a seal even in the case of a literate person (*Isri Pershad Narain Singh* v. *Debi Dial Nonia*, 2 L. R., H. C. S, 124).

27. When a tenant has sub-let, the successor in interest to such tenant shall be bound by the terms of the sub-lease, in so far as they are consistent with the terms of his own lease and the provisions of this Act.

Successor to sub-lessor bound by sub-lease.

This section is altogether new.

'**Tenant**' :—See sec. 4 (5) and notes thereunder. The word tenant in this section would include the sub-tenant mentioned in sec. 26, for a sub-tenant also is a tenant of *his* land-holder.

This section applies to all sorts of tenants with the exception of a thekadar (sec. 23) and a permanent tenure-holder, for a lease given by a thekadar or a permanent tenure-holder is not a sub-lease, nor is his lessee a sub-tenant. [see sec. 4 (7)].

'**In so far as**':—These words show that if the sub-lease be partly in accordance with the provisions of this Act and partly in contravention of them, the successor in interest of the tenant making the sub-lease will be bound by those terms which are consistent with the provisions of this Act and will not be bound by such terms as are inconsistent with them.

28. When a tenant has sub-let before the commencement of this Act, or subsequently thereto has sub-let in accordance with the provisions of this Act, and the interest of such tenant is extinguished before the expiry of the sub-lease, all covenants binding and enforceable as between the tenant and the sub-tenant shall be binding and enforceable as between the tenant's landholder and the sub-tenant :

Rights on extinction of sub-lessor's interest when sub-lease before or in accordance with Act.

Provided that if the rent payable by the sub-tenant is less than that hitherto payable by the tenant, the sub-tenant may, at his option, either vacate the holding or portion thereof so sub-let or continue in possession for the remainder of the term of the sub-lease, subject to the liability of paying rent at the rate hitherto payable by the tenant :

Provided, also, that the interest of the sub-tenant shall be extinguished if the tenant is ejected on any of the grounds specified in section 57.

This section is altogether new.

'Tenant' :—see under sec.27.

'Before the commencement of this Act' :—The Select Committee in their report printed at p. 58 of the N.-W.-P. and O. Gazette, dated 22nd June, 1901, say :—"Sub-leases in existence at the commencement of this Act are of course legal, and it is not intended to give any retrospective effect to the provisions of sec. 24 (now sec. 25). It is, however, necessary to determine what is to be the result of the extinction of the interest of the tenant-in-chief before a sub-lease under the existing law expires. The law on this point is not very definite at present. In our opinion such sub-leases should be treated as sub-leases made subsequently to the commencement of the Act in accordance with its provisions, and the result in the contingency referred to should be the same in both cases."

'And the interest of such tenant is extinguished' :—*i. e.*, under secs. 18, 57, 58, 71, 83 and 87.

Where an occupancy tenant grants a lease of land forming part of his occupancy holding for a term of years he cannot, during the subsistence of such term, relinquish his holding to the Zemindar so as to put an end to his lessee's rights under the lease (*Badri Prasad* v. *Sheodhian*, I. L. R., 18 All., 354 ; W. N., 1896, p. 109).

When a tenant has sub-let and the interest of such tenant is extinguished before the expiry of the sub-lease, the sub-tenant would become a tenant holding directly from the landholder, and if the sub-lessee continues to cultivate, he begins from the date of such extinction to acquire occupancy rights (*Gulzari Mal* v. *Lachmi Chand*, S. D. B. R., No. 1 of 1898; *Kallu* v. *Allah Bakhsh*, S. D. B. R., File No. 1746 of 1896, printed at p. 335 of Jacob's Selected Decisions of the Board of Revenue).

Proviso (1) :—The Select Committee in their report printed at p. 57 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"Objections have been urged against this section on the ground that, in case of collusion between a tenant and his sub tenant, the landholder might be compelled to accept a lower rent from the sub-tenant than he had received hitherto from the tenant-in-chief ; we have therefore added a proviso to protect the landholder, and at the same time give the sub-tenant the option of vacating the holding if he is unwilling to hold on at the rent paid by the ex-tenant-in-chief."

'If the rent payable by the sub-tenant is less' :—If the rent payable by the sub-tenant is higher than that hitherto payable by the tenant, the sub-tenant will be bound to pay to the tenant's landholder such higher rent, for under this section all covenants binding and enforceable between the tenant and the sub-tenant will be binding and enforceable as between the tenant's landholder and the sub-tenant. The first paragraph of this section is applicable whether the rent payable by the sub-tenant is the same as, or higher than, that hitherto payable by the tenant.

'Vacate the holding' :—But he shall have in respect of the removal of standing crops and other products of the earth the same rights as the tenant would have upon ejectment in accordance with the provisions of this Act. (Vide secs. 30, 74 and 75).

Proviso (2) :—It would seem that if a tenant is about to be ejected on the ground mentioned in sec. 57 (*a*), the sub-tenant can, like a mortgagee in possession, save the extinction of his interest in the holding by paying up the money due under an unsatisfied decree for arrears of rent passed against the tenant, in execution of which the sub-tenant is to be ejected (*Jawahir* v. *Ganpatjee*, 1 L. R., R. R. S., 18), and the sub-tenant may sue in the Civil Court to be re-imbursed by the tenant. (Vide sec. 69 of Act IX of 1872).

The Select Committee in their report printed at p. 58 of the N.-W. P. and O. Gazette, dated 22d June, 1901, say :—"We have redrafted the second paragraph of this section to make it clear that the interest of the sub-tenant shall cease if the tenant is ejected on any of the grounds specified in sec. 56 (now sec. 57) thus adding ejectment for non-payment of rent to the cases in which the sub-lease should determine. In such a case the sub-tenant should in our opinion be ejected with the tenant-in-chief." In connection with this section see notes on 'shall vacate his holding' under sec. 30.

Rights on extinction of sub-lessor's interest when sub-lease not in accordance with Act.

29. When a tenant has sub-let otherwise than in accordance with the provisions of this Act, and the interest of such tenant is extinguished before the expiry of the sub-lease, all covenants binding and enforceable as between the tenant and the sub-tenant shall, at the option of the tenant's landholder, be binding and enforceable as between the landholder and the sub-tenant.

This section is altogether new.

'Tenant' :—See under sec. 27.

If under this section the landholder binds himself with the covenants binding and enforceable as between the tenant and the sub-tenant, and elects to let the sub-tenant remain in possession of the holding on the extinction of the interest of the tenant, the sub-tenant becomes a tenant holding directly from the landholder from the date of such election, and he would begin to acquire occupancy rights from such date (*Gulzari Mal* v. *Lachmi Chand*, S. D. B. R., No. 1 of 1898; *Kallu* v. *Allah Bakhsh*, S.D.B.R., File No. 1746 of 1896, printed at p. 335 of Jacob's Selected Decisions of the Board of Revenue), and after the expiry of the term of the sub-lease given to him by the tenant he can be ejected under sec. 58 (*b*).

If the landholder, by his declaration, act, or omission intentionally causes or permits a person to believe that the sub-lease which the landholder's tenant gives to such person in contravention of the provisions of this Act is not so in contravention, the landholder will not be allowed in any suit or proceeding between himself and such person to say that the sub-lease was given in contravention of the provisions of this Act and that he is not bound by it. (Vide sec. 115 of the Indian Evidence Act I of 1872.) The above view is borne out by the principle on which *Dharajit* v. *Bhajan Lall* (S. D. B. R., No. 14 of 1893) was decided. In that case it was held that the distinct admission of occupancy right and consent to its sale in execution of a decree on the part of a landholder estopped him from issuing a notice of ejectment under sec. 36 of Act XII of 1881 against the purchaser of the holding.

Right of sub-tenant on extinction of his interest to removal of standing crops :—See secs. 30, 74 and 75.

In connection with this section see notes on "Shall vacate his holding" under sec. 30.

Extinction of sub-leases.

30. When the interest of a sub-tenant is extinguished with the extinction of the interest of the tenant from whom he holds, he shall vacate his holding accordingly, but shall have in respect of the removal of standing crops and other products of the earth the same rights as the tenant would have upon ejectment in accordance with the provisions of this Act.

This section is altogether new.

'When the interest of a sub-tenant is extinguished':—See secs. 28 and 29.

'Shall vacate his holding':—It is not necessary that the landholder should sue for the ejectment of his sub-tenant. The landholder is entitled to re-enter on the holding on the extinction of the interest of the sub-tenant, for this section provides that in such case the sub-tenant *shall* vacate his holding. In *Nilkanta Chaki* v. *Ghatu* (4 C. W. N., 667) it was held that where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat and that in such a case no notice to quit is necessary. But if the sub-tenant does not vacate the holding, he will be a person occupying land without the consent of the landholder and will be liable for the rent of the holding (Sec. 34).

'In accordance with the provisions of this Act':—See secs. 74 and 75.

Remedies against Illegal Sub-leases and other Transfers.

31. (1) Every sub-lease or other transfer, and every agreement to sub-let or otherwise transfer, made by a tenant in contravention of the provisions of this Act, shall be voidable as hereinafter provided.

Remdies against illegal sub-leases and other transfers.

(2) When a tenant has made any such sub-lease or other transfer, the landholder may sue for the cancellation of the same, or for the ejectment of the tenant and the sub-lessee or other transferee, or for both.

(3) When a tenant has made any such agreement to sub-let or otherwise transfer, the landholder may sue for the cancellation of the same.

(4) In every such suit the sub-lessee or other transferee, or the person entering into the agreement for the sub-lease or other transfer, shall be made a party to the suit.

This section is altogether new.

Sub-section (2):—

'Ejectment':—See secs. 57 (*d*), 63 and 64.

'For the ejectment of the tenant and other transferee':—A, an occupancy tenant, to whom the second and third paragraphs of sec.

9 of Act XII of 1881 (corresponding to sec. 20 of this Act) applied, gave a simple mortgage of his occupancy holding to one S. During the continuance of the mortgage A died and his sons surrendered the occupancy holding to the Zamindar. S then brought a suit for sale on his mortgage, obtained a decree, had the mortgaged property sold and purchased it himself. On suit by the Zamindar, who had not been made a party to any of the previous proceedings, against S for recovery of the holding, it was held that S took nothing by his purchase under the decree obtained as above described and that the zamindar was entitled to recover (*Sukru* v. *Tafazzul Husain Khan*, I. L. R., 16 All., 398 ; W. N., 1894, p. 130).

'**Or for both**' :—If the lanbholder sues only for cancellation of the illegal sub-lease or other transfer and brings a subsequent suit for the ejectment of the tenant and the sub-lessee or other transferee, it seems that such subsequent suit will not be barred by the provisions of sec. 43 of the Code of Civil Procedure, for this sub-section specifically says that the landholder may sue for the cancellation of the illegal sub-lease or other transfer, *or* for the ejectment of the tenant and the sub-lessee or other transferee, *or* for both.

The Bill as originally drafted contained after this sub-section the words "and shall also be entitled to sue for compensation." But the Select Committee omitted these words with the following remarks :—

"We have struck out the words 'and shall be entitled to sue for compensation.' Such cases are specific instances of sec. 56 (*d*) [now sec. 57 (*d*)] ; but neither in that section nor in sec. 66 is there any provision made for compensation. Nor does it appear what compensation could be claimed, as the landholder's right to recover the rent from the tenant-in-chief is not affected. The discretionary powers allowed the court in sec. 66 are full enough to secure the landholder against any injury." (Vide report of the Select Committee printed at p. 58 of the N.-W. P. and O. Gazette, dated 22nd June, 1901).

Limitation, jurisdiction, suit, appeal, review and revision :—Suits under this sub-section should be filed within one year from the date on which the illegal sub-lease or other transfer was made (4th Schedule, Group C, Serial No. 18) in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (*b*)]. But such suits would be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173).

An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [sec. 180 (1)] will lie to the Commissioner

(sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 53).

A second appeal on any of the grounds specified in sec. 584 of the Code of Civil Procedure will lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs (sec. 181) within ninety days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 54).

As to review see secs. 183 and 184.

As to revision see sec. 185.

Court Fee :—The court fee on a plaint or memorandum of appeal in a suit for cancellation of an illegal sub-lease or other transfer will be ten rupees. [The Court Fees Act VII of 1870, Schedule II, Art. 17 iii)]. The Court Fee in a suit for the ejectment of the tenant and the sub-lessee or other transferee will be computed according to the market-value of the land [The Court Fees Act VII of 1870, sec. 7, clause V (*d*)]. Thus, in a suit for pre-emption in respect of separate plots of land which do not constitute any definite share of a distinct revenue-paying area, and are not themselves separately assessed to revenue, it was held that the court-fee should be paid on the market-value of the land in suit (*Reference under the Court Fees Act, 1870, sec. 5*, I. L. R., 16 All., 493). In a suit for both the cancellation of an illegal sub-lease or other transfer and the ejectment of the tenant and the sub-lessee or other transferee, the court fee will be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. [The Court Fees Act VII of 1870, sec. 7, clause iv (*c*)].

Sub-section (3) :—

Limitation, jurisdiction, suit, appeal, review and revision: —Suits under this sub-section should be filed within one year from the date when the illegal agreement becomes known to the plaintiff (4th Schedule, Group C, serial No. 19). As to other matters see under sub-section (2).

Court Fee:—The court fee on a plaint or memorandum of appeal in a suit for the cancellation of an illegal agreement to sub-let or otherwise transfer will be ten rupees (The Court Fees Act VII of 1870, Schedule II, Art. 17 (iii)].

Division of Tenancies.

32. (1) No division of a holding or distribution of the rent payable in respect thereof, made by the co-sharers therein, shall be binding on the landholder, unless it is made with his consent.

Division of tenancies and distribution of rent unenforceable.

(2) No suit or other proceeding for the division of a holding or distribution of the rent thereof shall be entertained in any Civil or Revenue Court.

This section is altogether new.

Sub-section (1):—This sub-section corresponds to sec. 88 of the Bengal Tenancy Act, VIII of 1885, the difference between the two sections being that under sec. 88 of the Bengal Tenancy Act the consent is required to be in writing, while under this sub-section the consent need not be in writing; and that under this sub-section the division or distribution must have been made by the cosharers in the holding, while there is no such restriction in sec. 88 of the Bengal Tenancy Act.

'Division of holding':—Where a single suit for rent against the holders of several tenures is objected to on the ground of mis-joinder, the mere fact that they are not registered by the zamindar as separate holdings is no answer to the objection; the Court should enquire whether the tenants have not, in fact, been dealt with as holders of separate tenures (*Ranee Lalun Monee* v. *Sona Monee Dabee*, 22 W. R., 334). The above case was remanded to the lower Court, and it was said:—"If the Judge finds that those four tenures were indissolubly connected at the time of Bijoy Ram (the former holder), and that the zamindar in receiving rents from the present holders has dealt with them only as representatives of Bijoy Ram and as payers of component parts of the aggregate rental, the case would be different. If the *dakhilahs* show that the payment of separate rentals has been made as for separate tenures, that would be evidence of the holdings being separate. If the evidence shows that the amounts were paid as aliquot parts of the whole rental, that would go to show that the tenure was one."

On the other hand, where tenants hold land by different agreements, the Zamindar has no right, without their consent, to break up existing holdings and re-distribute lands so as to alter the extent and nature of the holdings (*Raheemuddy Akun* v. *Poorno Chunder Roy Chowdhry*, 22 W. R., 336).

'Distribution of rent':—The fact of some of the joint-occupiers of a joint tenure paying portions of the rent due from all, corresponding with the shares for which the joint-occupiers are liable, cannot prevent the zamindar from suing them all or making them all answerable for the joint debt (*Gour Mohun Roy* v. *Anund Mundul*, 22 W. R., 295).

'Landholder':—See sec. 4 (5) and notes thereunder.

'Consent':—The consent must be of the whole body of landlords. Co sharer landlords cannot consent to the division of a holding or to the distribution of the rent payable in respect thereof (S. A., No. 28 of

1897, decided by Rampini and Henderson JJ., July 7th, 1898, cited in Rampini's Bengal Tenancy Act). See also sec. 194.

This section as originally drafted required the consent to be in writing. But the Select Committee omitted the words 'in writing' because "landholders do, as a matter of fact, frequently recognize such divisions of holdings by accepting rent in accordance therewith." (Vide report of the Select Committee printed at p. 58 of the N.-W. P. and O. Gazette, dated 22nd June, 1901.)

In *Aubhoy Churn Maji* v. *Shoshi Bhusan Bose* (I. L. R., 16 Calc., 155) it was held that *dakhilahs* or rent receipts shewing that a tenant holds half the holding at half the rent payable in respect of the whole holding do not amount to a written consent under sec. 88 of the Bengal Tenancy Act. But this ruling was dissented from in *Pyari Mohun Mukhopadhya* v. *Gopal Paik* (I. L. R., 25 Calc., 531) in which it was held that a receipt for rent granted by a landlord or his agent containing a recital that a tenant's name is registered in the landlord's *sherishta* as a tenant of a portion of the original holding at a rent which is a portion of the original rent, does amount to a consent in writing by the landlord to a sub-division of the holding and a distribution of the rent payable in respect thereof, within the meaning of sec. 88 of the Bengal Tenancy Act.

Division of holding on partition between co-sharers of a mahal :—When in the course of partition (of a mahal) the holding of a tenant is divided, the Collector shall distribute the rent of the holding over the parts divided off (sec. 128 of the N.-W. P. and Oudh Land Revenue Act).

Sub-section (2) :—This sub-section is prohibitive only of a suit or other proceeding for the division of a holding or distribution of the rent thereof being entertained by a Civil or Revenue Court. But it does not prohibit the Courts from recognizing such division or distribution, if made with the consent of the landholder.

Suit for contribution not barred:—If a landholder realizes the whole rent payable to him in respect of a holding from any of the co-sharers therein who have made a distribution of the rent thereof without the consent of the landholder, a suit by the co-sharer so paying against the other co-sharers for contribution would not be barred by this sub-section. Such a suit would lie in the Civil Court, and limitation governing it would be under Art. 61 of the Indian Limitation Act, XV of 1877.

Suit by co-sharer deprived of his interest in holding :—If a co-sharer in a holding is deprived by the other co-sharers of his interest in the holding, a suit brought by him for a declaration of his rights would not be deemed to be a suit for the division of a holding, and would therefore be not barred by this sub-section.

CHAPTER IV.

DETERMINATION, ENHANCEMENT, AND ABATEMENT OF RENT.

General.

Initial rent of tenant.

33. A tenant on being admitted to the occupation of land is liable to pay such rent as may be agreed upon between him and his landholder.

This section corresponds to sec. 27 of Act XII of 1881.

This section provides for the occupation of land with the landholder's express consent. As to the occupation of land without such consent see sec. 34.

'Tenant':—See sec. 4(5) and notes thereunder.

'On being admitted to the occupation of land':—Under this section a tenant would be liable to pay rent only from the time when he is put in physical possession of the land and not before. For 'occupation' see notes on 'Held' at p 9.

'May be agreed upon':—i.e, may have been agreed upon.

As to valid and invalid agreements see secs 10 to 19 of the Indian Contract Act IX of 1872.

As to how the relation of landholder and tenant is created see under sec. 4 (5), p. 16.

Lease and counter-part:—See sec. 96.

Rent payable in absence of agreement.

34. A person occupying land, without the consent of the landholder, shall be liable for the rent of that land at the rate payable in the previous year, or, if rent was not payable in the previous year, at such rate as the Court may determine to be fair and equitable, but he shall not be deemed to hold the land within the meaning of section 11 until he begins to pay rent therefor.

This section is altogether new and corresponds to sec. 127 of the Oudh Rent Act XXII of 1886.

The Select Committee in their report printed at p. 58 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—" It frequently occurs that land is broken up and cultivated without the express consent of the landlord. Such occupation may amount to a technical trespass and the landholder's remedy would be in the Civil Court. Usually, however, there is no intention on the part of the occupier to deny the landholder's title, and it seems desirable that the Revenue Courts should have power to deal with such cases. The Oudh Revenue Courts have power to deal with cases of this kind. Section 32 A (now sec. 34) has therefore been inserted, drafted on the lines of sec. 127 of the Oudh Rent Act, 1886."

This section deals with such persons only who, without the consent of the landholder, occupy land for agricultural purposes, and not with persons occupying it for any other purpose or by the assertion of an adverse title to the land. It applies only to cases where the person occupying land without the consent of the landholder does not deny the landholder's title.

See notes on 'How the relation of landholder and tenant is created' under sec. 4 (5), at p. 16.

'Person occupying land' :—Mr. Currie in his commentary on sec. 127 of the Oudh Rent Act says :—" The occupant of land is spoken of not as a 'tenant' but as 'a person occupying land without consent.' The terms of the section are clear 'any person occupying land without the consent of the landholder shall be liable,' not *is* liable, or *was* liable, or *had all along been* liable for the rent of the land so held."

By using the word 'person' the legislature seem to have intended that such person would not be deemed to be a tenant and would not begin to acquire occupancy rights from the date of occupation.

'Land' :—See sec. 4 (2) and notes thereunder.

'Landholder' :—See sec. 4 (5) and notes thereunder.

'Without consent' :—Consent under this section may be either express or implied (*Maharani Indar Kuar* v. *Ram Nath*, S. D. B. R., No. 34 of 1891).

If a person occupies land *against* the consent of the landholder this section would not apply, but in such case the landholder's remedy would be by an action against him in the Civil Court as a trespasser for recovery of possession and for use and occupation of the land.

'Previous year' :—*i. e.*, the year immediately preceding the date of occupation, and not the year preceding the matter being brought into the Court.

'If rent was not payable' :—*e. g.*, in *parti* land, or land which has become *parti* in the previous year.

'If rent was not payable in the previous year, at such rate as the Court may deem to be fair and equitable':—If rent was not payable in the previous year, the landholder may sue for arrears of rent, whether during or after the continuance of the tenancy, notwithstanding the Court has not, before the institution of such suit, adjudged what is the fair and equitable rate. The fair and equitable rate may be adjudged in such suit. The ruling in *Debi Singh* v. *Muhammad Ismail Khan* (W. N., 1898, p. 38) that a landholder cannot sue for arrears of rent if no rent has been fixed is, therefore, inapplicable under this section. Under sec. 95 a separate suit *during the continuance of the tenancy* may be brought for a declaration as to the rent payable in respect of a holding. In *Bhabhuti* v. *Kuer Sumer Singh* (S. D. B. R., No. 20 of 1892) it has been held by the Board that under sec. 127 of the Oudh Rent Act (corresponding to this section) a suit for the determination of a fair and equitable rent may not separately be brought. The reason for this seems to be that in the Oudh Rent Act there is no section corresponding to sec. 95 of this Act. The ruling *Bhabhuti* v. *Kuer Sumer Singh* above quoted is therefore not applicable in so far as it lays down that a suit for the declaration of a fair and equitable rent cannot be brought separately.

'Until he begins to pay rent':—Under sec. 33 a person on being admitted to the occupation of land becomes a tenant of the landholder from the date of such occupation and begins to acquire occupancy rights under sec. 11 from such date. But as the words used in this section are 'until he begins to pay rent therefor,' commencement of the acquisition of occupancy rights will date from the time of actual payment of rent and not from the date of occupation.

If the occupant under this section has been treated as a tenant, mere non-payment of rent to the landholder does not render his possession adverse to the landholder (*Gangabai* v. *Kalapa Dari Makrya*, I. L. R., 9 Bom., 419).

Trespassers:—See notes on 'How the relation of landholder and tenant is created' under sec. 4 (5), p. 16. The landholder can sue an occupant under this section as a trespasser in the Civil Court for recovery of possession and damages for use and occupation of the land (*Kylash Chunder Sircar* v. *Woomanund Roy*, 24 W. R., 412). But the landholder may treat him as a tenant at pleasure. Receipt of rent from a trespasser or suing him for rent will convert him into a tenant (*Cazee Syud Mahomed Azmul* v. *Chundee Lall Pandey*, 7 W. R., 250; *Gudadhur Banerjee* v. *Khettur Mohun Surmah*, 7 W. R., 460). If the landholder treats the occupant as a tenant, a suit for his ejectment must be brought in the Revenue Court (*Musammat Thakurain Dilraj Kuer* v.

Mir Salar Bakhsh, S. D. B. R., No. 6 of 1892). When the occupant has once been treated as a tenant, a suit against him as a trespasser in the Civil Court for possession and damages for use and occupation of the land would be barred (*Debi Singh* v. *Mohammad Ismail Khan*, W. N., 1898, p. 38; *Abdul Hamid* v. *Mohini Kant Saha*, 4 C. W. N., 508). The service of a notice of ejectment under sec. 36 of Act XII of 1881 is, as between the person who causes such notice to be served and the person on whom it is served a conclusive admission by the former of the existence between them of the relationship of landlord and tenant; and the landlord cannot afterwards sue in the Civil Court to eject the same tenant from the same land on the ground that he is not a tenant but a mere trespasser (*Baldeo Singh* v. *Imdad Ali*, W. N., 1893, p. 93). But the mere fact of a plaintiff in a suit for ejectment in a Civil Court having on a previous occasion applied to the Revenue Court for the ejectment of the defendant (it having been found that the relation of landholder and tenant did not exist between the parties) would not estop him from asserting that the defendant was unlawfully in possession, that is, a trespasser (*Zubeda Bibi* v. *Sheo Charan*, I. L. R., 22 All., 83; W. N., 1899, p. 189; *Hamid Ali Shah* v. *Wilayat Ali*, I. L. R., 22 All., 93; W. N., 1899, p. 193).

Raiyats are not trespassers, though the title of the persons who let them into occupation of the land may have been defective (*Ramgat Panday* v. *Radha Pershad Singh*, 22 W. R., 195; *Mohima Chunder Shaha* v. *Hazari Pramanick*, I. L. R., 17 Calc., 45; *Binod Lal Pakrashi* v. *Kalu Pramanick*, I. L. R., 20 Calc., 708; *Azim Sirdar* v. *Ram Lal Shaha*, I. L. R., 25 Calc., 324).

A person occupying land under this section, if recognized as a tenant, will be deemed to be a tenant from year to year. It was held in *Prosanno Coomaree Debea* v. *Ruttun Bepary* (I. L. R., 3 Calc., 696; 1 C. L. R., 577), that the nature of a holding as between a landlord and a tenant must always be a matter of contract, either express or implied. If there is no express agreement a tenant becomes a tenant-at-will or from year-to-year. This ruling was followed in *Abdul Kareem* v. *Omer Chand Lahta* (24 W. R., 461) and in *Tarakpado Ghosal* v. *Shyama Churn Napit* (8 C. L. R., 50).

Presumption as to rent.

35. The rent or rate of rent payable by a tenant shall be presumed to be the rent or rate of rent previously payable by him until a registered agreement, or a decree or order of a Court, is proved varying the same.

This section corresponds partly to sec. 21 of Act XII of 1881.

'Rent payable':—If a remission of rent is given by a Naib (landholder's agent) without the landholder's sanction, such remitted rent is not 'rent payable' (*Bhoobun Mohun* v. *Bhobosoonduree Debia Chowdhrain*, 8 W. R., 452).

'Tenant':—See sec. 4 (5) and notes thereunder.

'Registered':—See sec. 4 (11) and notes thereunder.

'Agreement':—Where a *patta* in its terms expressly stipulates for an increase of rental according as the lands let are brought under cultivation, and a measurement taken, a landlord is entitled to recover such increased rent as is agreed upon in the *patta* without suing for enhancement (*Nistarini Dasi* v. *Bonomali Chatterji*, I. L. R., 4 Calc., 941).

'Decree or order of Court':—Where the plaintiff obtained a decree against the defendant for assessment of enhanced rent and shortly afterwards the defendant executed a *kabooliat*, at a reduced rate, for eleven years, and after the term had expired, the plaintiff sought to recover rent from the defendant at the rate settled by the decree, it was held that the decree had been superseded by the subsequent arrangement, and that the plaintiff could not recover rent at an enhanced rate (*Nobin Chunder Sircar* v. *Gour Chunder Shaha*, I. L. R., 6 Calc., 759).

Compensation for rent exacted in excess.

36. A tenant from whom any sum or produce is exacted by his landholder in excess of the amount recoverable from him as an arrear of rent under this Act, or any other enactment for the time being in force, shall be entitled to recover from the landholder such compensation not exceeding double the amount, or double the value of the produce, so exacted, as the Court thinks fit to decree, in addition to the amount or value of the produce so exacted.

This section corresponds to sec. 48 of Act XII of 1881 which contained no provision as to the exaction of any *produce*. Section 48 of Act XII of 1881 contained provisions as to compensation for withholding receipt for rent paid by a tenant, but this matter is now dealt with by sec. 110 of this Act.

'Tenant':—See sec. 4 (5) and notes thereunder.

This section applies only between a landholder and his tenant and not to the acts of third parties (*Bibee Syefun* v. *Rudder Sohay*, I. L. R., 7 Calc., 582). Where a proprietor collected rents direct from the under-

tenants of a lessee, it was *held* that the lessee could not sue for damages (*Martin* v. *Radha Shookool*, S. D. A., N.-W. P., 471 of 1861, May 27th, 1862), nor can an undertenant recover from the zemindar by a suit under this section, as the relationship of landholder and tenant does not exist between the two ; he must file a suit in the Civil Court (*Ganga* v. *Makhu Lal*, W. N. 1884, p. 356.)

'**Exacted** :—'Exaction means enforcing payment, by authoritative or peremptory demand, of what is more than due, and is to be distinguished from 'extortion,' as used in sec. 103, which means wresting from an unwilling person by physical force, menace, duress, torture, or any undue or illegal exercise of power or ingenuity, anything whether the same is legally due or not.

The word 'exacted' would seem to imply nothing more than "collected after demand" (*Ram Prasad Bhagat* v. *Ram Tahal Singh*, Marshall's Reports, 655). Money collected under a legal proceeding, though in excess of the due amount, is not exacted (*Chandra Mani Chaudhrain* v. *Debendra Nath Rai*, Marshall's Reports, 420). Where, on the allegation that the defendant had sub-let land to him for the purpose of raising crops under a contract to share the produce between them, the plaintiff sought to recover the value of his share of the crop which the defendant had appropriated, it was held that the claim was not for a sum exacted in excess of rent (*Gureeboollah Puramanick* v. *Fukeer Mahomed Kholoo*, 10 W. R., 203). An exaction by a landlord's agent is an exaction by the landholder himself (*Rashmonee Debea* v. *Ramjoy Shaha*, 2 Hay's Reports, 516, and Decisions under Act X of 1859, reported by the Secretary to the Board of Revenue, Calcutta, p. 135).

'**As the Court thinks fit to decree**' :—The discretion of the Court under this section relates only to the *amount* of compensation to be awarded, but the Court is bound to award the amount or value of the produce exacted.

Limitation, jurisdiction, suit, appeal, review and revision :—Suits under this section should be filed within three months from the date of the exaction (4th Schedule, Group B, serial No. 12) in the Court of the Assistant Collector in charge of the sub-division; provided that if there is no Assistant Collecter in charge of the sub-division, such suits should be filed in the Court of the Collector (sec. 174). But such suits would be disposed of by an Assistant Collector of the 1st class (sec. 172) or by the Collector (sec. 173).

An appeal from the decree of an Assistant Collector of the first class will lie to the District Judge within thirty days from the date of the decree appealed against (Indian Limitation Act, 2nd schedule, Art.

152), if the amount or value of the subject matter exceeds one hundred rupees, or the rent annually payable has been a matter in issue in the Court of first instance, and is a matter in issue in the appeal (sec. 177); provided that when the amount or value of the subject matter of the suit exceeds five thousand rupees, the appeal will lie to the High Court (proviso to sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act, 2nd schedule, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a District Judge (sec. 182) within ninety days from the date of the decree appealed against.

As to review vide sec. 184. As to revision vide sec. 185.

Court Fee:—The Court fee on a plaint or memorandum of appeal will be computed under sec. 7 (i) of the Court Fees Act according to the amount claimed.

Consideration of caste and class of tenant in fixing rent.

37. When a Court has to determine the rent of a tenant, if it is proved that by local custom or practice—

(*a*) caste is taken into account in determining the rent payable by tenants, or

(*b*) any class of persons hold land on favourable rates of rent,

the rent shall be fixed with reference to such custom or practice, but in no case at an amount less than the revenue payable in respect of his holding, with an addition of twenty per cent. thereon.

This section corresponds to sec. 20 of Act XII of 1881.

'Custom':—See Evidence Act secs. 13 and 32 (7) and notes thereon in Amir Ali's and Field's Commentaries on the Indian Evidence Act.

The wajib-ul-arz generally contains a record of the customs of the *mahál* for which it is prepared. A wajib-ul-arz prepared and attested according to law is *prima facie* evidence of any custom which it records (*Isri Singh* v. *Ganga*, I. L. R., 2 All., 876; *Mahammad Hossain* v. *Munna Lall*, I. L. R., 8 All., 434). A wajib-ul-arz containing a mere expression of the views of the proprietor is not an authentic record of local customs (*Uman Prasad* v. *Gandharp Singh*, I. L. R., 15 Calc., 20).

Where a wajib-ul-arz was not signed by the lambardar or by any of the cosharers of the village for which it was framed, but was found

to have been in existence without having been questioned by any of the parties who might have been affected thereby for a period of some thirteen years, it was held that the wajib-ul-arz might be taken as *prima facie* evidence of the custom of the village for which it was framed (*Rustam Ali Khan* v. *Abbasi Begam*, W. N., 1891, p. 146).

The onus is on the party who alleges the custom (*Maharaja Tej Chund Bahadoor* v. *Sree Kanth Ghose*, 6 W. R., P. C., 48).

A custom is a rule, which, in a particular family or district, has, from long usage, obtained the force of law. It must be ancient, certain and reasonable, and, being in derogation of the general rules of law, must be construed strictly (*Har Prasad* v. *Sheo Dyal*, 26 W. R., P. C., 55).

In *Lachman Rai* v. *Akbar Khan* (I. L. R., 1 All., 440) Turner, J., said :—"The most cogent evidence of custom is not that which is afforded by the expression of opinion as to its existence, but by the enumeration of instances in which the alleged custom has been acted upon and by the proof afforded by judicial or revenue records, or private accounts or receipts that the custom has been enforced."

The most satisfactory evidence of an enforcement of a custom is a final decree based on the custom (*Gurdayal Mal* v. *Jhandu Mal*, I. L. R., 10 All., 585). General custom is not proved by the statement of two individuals, or by proving that two particular tenants paid at a particular rate (*Prabhu Das* v. *Sheonath Rai*, W. R., 1864, Act X, 27).

A custom to be valid must be ancient, must have been continued and acquiesced in and must be reasonable and certain (*Lala* v. *Hira Singh*, I. L. R., 2 All., 49). But in *Kuar Sen* v. *Mamman* (I. L. R., 17 All., p. 87 at p. 92) the High Court said :—"We cannot in these provinces apply the principle of the English Common Law that a custom is not proved if it is shown not to have been immemorial. To apply such a principle would be to destroy many customary rights of modern growth in villages and other places." Where a local custom excluding or limiting the general rules of law is set up, a Court should not decide that it exists unless such Court is satisfied of its reasonableness and its certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted, or by stealth, or by force, and that it had been openly enjoyed for such a length of time as suggests that originally, by agreement or otherwise, the usage had become a customary law of the place in respect of the persons and things which it concerned (*Kuar Sen* v. *Mamman*, I. L. R., 17 All., 87).

'**Practice**' :—or usage. See Evidence Act, secs. 13 and 32 (7) and notes thereunder in Amir Ali's and Field's Commentaries on the Indian Evidence Act.

In *Juggmohun Ghose* v. *Manick Chund* (7 M. I. A., 282 ; 4 W. R., P. C., 8) their Lordships of the Privy Council in speaking of mercantile usage said :—" Proof of mercantile usage needs not either the antiquity, the uniformity, or the notoriety of custom, which, in respect of all these, becomes a local law. The usage may be still in course of growth ; it may require evidence for its support in each case ; but in the result it is enough if it appear to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties in their contract." In *Raja Raj Kishen Singh* v. *Ramjoy Surma Mozoomdar* (19 W. R., 8) it was said :—" It is of the essence of family usages that they should be certain, invariable, and continuous ; and well-established discontinuance must be held to destroy them." In *Palakdhari Rai* v. *Manners*, (I. L. R., 23 Calc., 179) it was held that a local usage must be proved to be so prevalent in the neighbourhood that it can reasonably be presumed to exist in that locality. In *Dalgeish* v. *Guzuffer Hossain* (I. L. R., 23 Calc., 427) it was held with reference to sec. 178 of the Bengal Tenancy Act that " the word usage would include what the people are now or were recently in the habit of doing in a particular case. It may be that this particular habit is only of a very recent origin, or it may be one which has existed for a long time. If it be one regularly and ordinarily practised by the inhabitants of the place where the tenure exists, there would be usage within the meaning of the section." In *Sariatullah Sarkar* v. *Pran Nath Nandi* (I. L. R., 26 Calc., 184) it was held that in order to establish usage it is not necessary to require proof of its existence for any length of time, and that the statements made by persons who are in a position to know of the existence of a usage in the locality are admissible in evidence.

Clause (a) :—

'Caste' :—It appears that if a person belongs to a certain caste, but owing to misbehaviour or some other cause he is degraded and ceases to belong to that caste, such degradation would not deprive him of the benefits of this section.

Clause (b) :—In order to establish the right of a tenant to hold at favourable rates by reason of his relationship to the zamaindars, a local custom to this effect must be proved : the existence of a mere family custom is not sufficient (*Bholu* v. *Zorawar*, 2 L. R., R. R. S., 72). In fixing the rent of privileged tenants the actual rent rates paid by privileged tenants in the locality must be ascertained and applied (*Gajadhar Rai* v. *Raja Shimbu Narain Singh*, 2 L. R., R. R. S., 18.)

'Rent' :—Vide Sec. 4 (3) and notes thereunder.

38. All suits for enhancement or abatement of rent shall be instituted between the thirtieth day of June and the first day of October.

Suits for enhancement or abatement when to be filed.

This section corresponds to sec. 19 of Act XII of 1881.

For suits for enhancement or abatement of rent by or against (1) fixed-rate tenants, see sec. 40; (2) ex-proprietary tenants, see sec. 42; (3) occupancy tenants, see sec. 43; and (4) non-occupancy tenants, see sec. 48. Suits for enhancement or abatement of the rent of permanent tenure-holders will be regulated by Regulation XI of 1825. (Vide Report of the Select Committee on sec. 38 of the Bill, printed at p. 59 of the N.-W. P. and O. Gazette, dated 22nd June, 1901.)

'Between the thirtieth day of June and the first day of October':—i. e., in the months of July, August and September. But under Act XII of 1881 it was provided that applications for enhancement or abatement of rent must be made on or before the 31st day of August next before the year commencing on the 1st day of July from which the rent is to be enhanced or abated.

39. Every decree for enhancement or abatement shall take effect from the first day of July next after the date of such decree, unless for some reason, to be recorded, the Court thinks fit to direct that it shall take effect from some earlier date.

Decrees in such suits from when to have effect.

This section corresponds to sec. 19 of Act XII of 1881.

'For some reason to be recorded':—If the Court directs that the decree shall take effect from some earlier date without recording reasons, it seems that the decree will not be void altogether but only in so far as it makes such direction, and that such decree will take effect, under the first part of this section, from the first day of July next after the date of such decree, as if the Court had given no such direction.

'Earlier date':—The Court cannot fix any later date for the enhancement to take effect except in the case of progressive enhancements under sec. 46.

Fixed-rate Tenants.

Enhancement and abatement of rent of fixed-rate tenants.

40. (1) A landholder may sue for enhancmeent of the rent of a fixed-rate tenant only on the ground that the area of the land in such tenant's holding has been increased by alluvion, or by the tenant's encroachments.

(2) A fixed-rate tenant may sue for abatement of his rent only on the ground that the area of the land in his holding has been diminished by diluvion, or by the taking up of land for a public purpose, or a work of public utility.

This section corresponds to secs. 11 and 18 of Act XII of 1881.

Sub-section (1) :—

What a plaintiff must prove in a suit under this sub-section :——To entitle the plaintiff to a decree for enhancement of rent on the ground of increase in the area of the defendant's holding, the plaintiff must show that the defendant is holding lands in excess of what he is paying rent for, and in order to do that he must show for what quantity of land the defendant is paying rent (*Surj Kanta Acharjee* v. *Baneswar Shaha*, I. L. R., 24 Calc., 251). A decree for additional rent on account of additional land cannot stand merely on the ground that the defendant's land as now measured by a particular standard is larger in area than the defendant admits. It must be shewn that the defendant is in possession of more land than he has been paying rent for, or that the rent which he has been paying was not payable for the whole of the land which is in his possession, or that the pole with which the defendant's land has now been measured was the pole with which it was measured in the first instance (*Alif Khan* v. *Raghu Nath Prasad*, 1 C. W. N., 310). But mere increase in area will not entitle the landholder to sue for enhancement under this sub-section. He must also show that the increase is due to alluvion or to the tenant's encroachments.

'Alluvion' :—See Regulation XI of 1825. Lands gained by gradual accession from the recess of a river or the sea is alone to be considered as an increment to the tenure of the person to whose estate it may be annexed [sec. 4 (1) of Regulation XI of 1825] ; but when a river by a sudden

change of its course may break through and intersect an estate, the lands so separated, being clearly recognized, shall remain the property of the original owner [sec. 4 (2) of Regulation XI of 1825]. The title by accretion to a new formation is founded on a gradual accretion by adherence to some particular land which may be termed the nucleus of accretion (*Eckowrie Singh* v. *Heeralall Seal*, 12 M. I. A., 136 ; 11 W. R., P. C., 2). Where lands become annexed to a *jote* by gradual accretion, the *jotedar* is entitled to hold them on the same principle, and under the same legal conditions, as he holds the parent estate (*Gobind Monee Debia* v. *Dino Bundhoo Shaha*, 15 W. R., 87). The law gives an increment to a tenant or under-tenant in possession without reference to the nature of his title (*Narain Das Bepary* v. *Soobul Bepary*, 1 W. R., 113). As between himself and the Zamindar, a ryot is entitled to any accretion to his holding formed by the recession of the river, and the fact of his being a mere tenant-at-will does not entitle the zamindar to turn him out of the accretion while he retains as tenant the original holding (*Bhuggobut Pershad Singh* v. *Doorg Bijoy Singh*, 16 W. R., 95). If a tenant has acquired a right of occupancy in his original holding he would enjoy a similar right in the land which has accreted to his holding, although he may not establish that he has held such accreted land for twelve years (*Oodit Rai* v. *Ram Gobind Singh*, 2 Agra, Part II, 206). A raiyat who has a right of occupancy is entitled to hold lands accreted to his *jote* as an increment (*Gaurhari Kaibartto* v. *Bhola Kaibartto*, I. L. R., 21 Calc., 233). The tenant is liable, under clause 1, sec. 4 Regulation XI of 1825, for payment of rent for the alluvial land, subject to the provisions of the Act (*Juggut Chunder Dutt* v. *Panioty*, 6 W. R., Act X, 48). Lands accreting to a tenure are, under Reg. XI of 1825, to be held under the rates and on the conditions imposed upon the original tenure itself (*Mahomed Wassil* v. *Zulekha Khatoon*, 2 Hay's Reports, 515). The meaning of sec. 4, clause 1, Reg. XI of 1825 is that the incidents of the original tenure attach to the increment (*Golam Ali* v. *Kali Krishna Thakur*, I. L. R., 7 Calc., 479 ; 8 C. L. R., 517).

'Tenant's encroachments':—Unless encroachment is proved, mere increase, found on measurement, in the area of the tenant's holding, due to a mistake in former measurement or to clerical error, would not make his rent liable to enhancement.

If a fixed-rate tenant occupies, without the consent of the landholder, land other than that over which he has got the rights of a fixed-rate tenant, he may be dealt with under sec. 34.

When a tenant holds excess lands for which no rent has hitherto been paid, the Zamindar may treat him either as a tenant in respect of the excess land or as a trespasser at his pleasure ; in the latter case a

suit will not lie for enhancement but only for a *kabooliat* and for a determination of the rate at which the same should be delivered (*David* v. *Ram Dhun Chatterjee*, 6 W. R., Act X, 97 ; *Rajmohun Mitter* v. *Gooroo Churn Aych*, 6 W. R., Act X, 106 ; *Golam Ali* v. *Gopal Lal Thakoor*, 9 W. R., 65). But in *Gooroo Dass Roy* v. *Issur Chunder Bose* (22 W. R., 246) it was held that the presumption of English law as to encroachment made by a tenant, during his tenancy, upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of the landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit.——When a tenant encroaches upon the land of his landlord, though the landlord may, if he chooses, treat him as a tenant in respect of the land encroached upon, the tenant has no right to compel the landlord against his will to accept him as a tenant in respect of that land (*Prohlad Teor* v. *Kedar Nath Bose*, I. L. R., 25 Calc., p. 302, at p. 305). But it does not follow that because the landlord has this option he can treat the tenant as a trepasser at any time after having exercised his option in treating him as a tenant for some time (*Khondakar Abdul Hamid* v. *Mohini Kant Saha*, 4 C. W. N., 508).

Suit by fractional co-sharers :—A suit for enhancement must be brought by all the joint co-sharers and cannot proceed at the instance of some of the fractional co-sharers (sec. 194).

Sub-section (2) :—A fixed-rate tenant cannot sue for abatement of his rent on the ground that the area of the land in his holding has been found on measurement to be less than that for which he has been paying rent.

'Diluvion' :—See Reg. XI of 1825. A tenant has a right to, and can claim abatement of, rent where the area of the land, the subject of his tenure, has been diminished by diluvion, and such right passes to a purchaser on a sale of the tenure (*Kali Prasanna Rai* v. *Dhananjai Ghose*, I. L. R., 11 Calc., 625). An abatement of rent in the sense of Chapter II of the N.-W. P. Rent Act, No. XII of 1881, implies the reduction of the rent payable for the holding, if not permanently, at all events for an indeterminate period, the rent as abated being subsituted for the original rent and continuing to be the rent of the holding until altered by agreement or by further order. A tenant cannot apply under Chapter II on any ground for a reduction or revision of rent for a particular year only and having no effect beyond that year on the rent payable for the holding. Where, therefore, owing to fluvial action, the holding of a tenant in any particular year becomes unculturable by

being submerged by water or covered by sand, no application for abatement of rent can be made, because such submersion is not diluvion of a permanent character (*Beni Prasad Kuari* v. *Dukkhi Rai*, I. L. R., 23 All., 270 ; W. N., 1901, p. 69).

'By the taking up of land for a public purpose, or a work of public utility' :—Abatement of rent can be claimed on the ground of part of the land having been taken up for railway purposes (*Maharajah Dheraj Mahtab Chand Bahadoor* v. *Chittro Coomaree Bibee*, 16 W. R., 201 ; *Uma Sunkur Sirkar* v. *Tarini Chunder Singh*, I. L. R., 9 Calc., 571 ; *Watson* v. *Nistarini Gupta*, I. L. R., 10 Calc., 544), or on the ground of land having been taken up by Government for a road (*Deen Dyal Lal* v. *Mussammat Thukroo Koonwar*, 6 W. R., Act X, 24). When land is taken up for public purposes and compensation made, which is divided between the zamindar and those holding under him, any deduction of rent claimed from the zamindar must be reckoned with reference, not to the gross amount of compensation, but to the proportion which passed into his hands (*Maharajah Dheraj Mahtab Chand Bahadoor* v. *Chittro Coomaree Bibee*, 16 W. R , 201).

Abatement of rent cannot be claimed as a set-off :—In a suit for arrears of rent a claim for abatement of rent cannot be made by way of set-off, as in a suit for arrears of rent the rent or rate of rent will, under sec. 35, be presumed to be the rent or rate of rent previously payable by the tenant, until a registered agreement, or a decree or order of a Court is proved varying the same. In *Radha Prasad Singh* v. *Baldeo Misr* (W. N., 1893, p. 29) it was held that a tenant at fixed-rates is liable to pay rent at the rate fixed, irrespective of whether his holding has become larger or smaller from natural causes, unless and until such rent has been altered in consequence of an order on an application for abatement.

Res judicata in cases of claims for abatement of rent :— In a suit by raiyats against their zamindar praying for measurement of certain land, and for a declaration of the amount of yearly rental, it appeared that, in a previous suit by the zamindar against the raiyats, the raiyats had alleged that the amount of rent and the extent of land had been overstated by the zamindar, but the Court decided that the raiyats were bound by a *jammabundi* signed by them, and refused to try whether the extent of land had been overstated. *Held* that the suit was not barred as *res judicata* (*Roghoonath Mundul* v. *Juggut Bundhoo*, I. L. R., 7 Calc., 214). A plaintiff who has sued for and obtained a decree for an abatement of rent, may afterwards sue for a refund of the rent paid by him before instituting the suit for abatement of rent, in excess of the amount justly payable, notwithstanding that he might, if he had chosen,

have included this claim in his suit for abatement of rent (*Okhay Coomar Chuttopadhya* v. *Mahtap Chunder Bahadoor*, I. L. R., 5 Calc., 24).

Limitation, jurisdiction, suit, appeal, review and revision :—There is no period of limitation for suits under this section (4th Schedule, Group C, serial Nos. 20 and 21). Suits under this section should be filed in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (b)]. But such suits would be disposed of by an Assistant Collector of the first class empowered by the Local Government in that behalf (sec. 172) or by the Collector (sec. 173).

An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [sec. 180 (1)] will lie to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, serial No. 53).

A second appeal on any of the grounds specified in sec. 584 of the Code of Civil Procedure will lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs (sec. 181), within ninety days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 54).

As to review vide secs. 183 and 184. As to revision vide sec. 185.

Court Fee :—Under sec. 7, sub-section XI, clauses (b) and (f), Act VII of 1870, in a suit (1) to enhance the rent of a tenant having a right of occupancy, and (2) for abatement of rent, the amount of fee payable under the Act will be computed according to the amount of rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

Rules for enhancement of rent :—vide Appendix B.

Ex-proprietary and Occupancy Tenants.

Regulation of enhancements and abatements.

41. (1) The rent of an ex-proprietary or occupancy tenant shall be liable to enhancement or abatement only—

(*a*) by registered agreement, or

(*b*) by decree or order of a Revenue Court ;

and when so enhanced or abated, shall not again be liable to enhancement or abatement until or unless—

(*c*) ten years or such longer period as may have

been agreed upon, decreed or ordered, has elapsed, or

(*d*) the assessment of the mahál has, before confirmation, been revised by order of the Local Government, or

(*e*) the period of the settlement of the local area in which the mahál is situated has come to an end, except

(*f*) on the grounds specified in clauses (*b*), (*c*), (*d*), and (*e*) of section 42, or clauses (*c*), (*d*), (*f*), and (*g*) of section 43, as the case may be ; or

(*g*) as provided by sections 11 and 12 of the Northern India Canal and Drainage Act, 1873.

VIII of 1873.

(2) Where the rent has been varied merely on the ground of an increase or decrease in area under clause (*c*) or clause (*e*) of section 42, or clause (*d*) or clause (*g*) of section 43, such variation shall not be considered in computing the period of ten years.

(3) The term for which the rent of an ex-proprietary or occupancy tenant is fixed by decree or order of a Revenue Court shall not be less than ten years, but no term in excess of ten years shall be so fixed except upon agreement by the parties.

This section corresponds to secs. 12 to 17 and 22 of Act XII of 1881.

Sub-section (1), Clause (a) :—

'Registered' :—See sec. 4 (11) and notes thereunder, p. 20 *ante*.

Agreement' :—Under sec. 4 (1) agreements made by predecessors in interest will be binding on their successors.

A tenant cannot be precluded by the terms of his agreement from claiming an abatement of rent (Sec. 3).

Clause (b) :—

'Revenue Court' :—See sec. 4 (13), p. 29 *ante*.

Clause (c) :—

'**Such longer period**':—i. e., any period above ten years, subject however to the provisions of Sec. 49.

'**As may have been agreed upon**':—When a member of a Hindu family who had the management of the ancestral property was sued by one of the tenants for illegal distraint, plaintiff put in a *patta* in which the rent was described as a fixed rent and the tenancy an old and existing tenancy. The result of that suit was a *solehnamah* or compromise between the parties in which the manager fixed or confirmed the rent of the tenure, and agreed that the rent should not be enhanced. *Held* that the effect of the *solehnamah* was to confer upon the tenant and his decendants a *mouroosee mokurruree* right in the land at the fixed rent, as far as the manager was capable of conferring such a right (*Bhoobun Mohinee Dassee* v. *Dhanaye Karigar*, 15 W. R., 434). Where an agreement embodied in the *Wajib-ul-arz* restricted the landlord's right to enchance, it was held that he was bound by it (*Kyalee Ram* v. *Mahomed Ali Khan*, 1 Agra, Rev., 62 ; *Nuttha Ram* v. *Sookh Ram*, 3 Agra, 90). But such agreements will become inoperative after the settlement in which the *Wajib-ul-arz* was prepared (*Baichoo Ram v. Dowlut Ram*, 2 N.-W. P., 8). When land is let for the purpose of clearing jungle, or other reclamation, and on this ground a reduced rent is provided for the first few years, and it is said that the rent is to be at such and such rate, a sum as the full rent, such rent is not liable to enhancement (*Huro Prasad Roy Chowdhry* v. *Chundee Churn Boyragee*, I. L. R., 9 Calc., 505).

Clause (d) :—See secs. 87 and 94 of the N.-W. P. and Oudh Land Revenue Act III of 1901, which run as follows :—

87. (1) The Settlement Officer shall, on the application of the landholder or of an exproprietary or occupancy tenant, and may, of his own motion, determine and fix the rents payable by such tenants, whether by way of enhancement, abatement, or otherwise.

(2) In fixing such rents the Settlement Officer shall have regard—

(a) in the case of ex-proprietary tenants, to the provisions of sec. 10 of the N.-W. P. Tenancy Act, 1901. . . . .

(b) in the case of occupancy tenants—

(*i*) to the provisions of the N.-W. P. Tenancy Act, 1901. . . . for the enhancement or abatement of such rents ; or

(*ii*) with the previous sanction of the Local Governmet, to the rent-rates sanctioned by the Board, in passing orders on the report submitted under sec. 63, for similar land with similar advantages in the circle in which the holding of the tenant is situate, or to the special rent-rates (if any) employed for the assessment of the mahal in which such holding is situate :

Provided that when it is proved that, by local custom or practice,—

(*a*) caste is taken into account in determining the rent payable by tenants, or

(*b*) any class of persons hold land on favourable rates of rent,

the rent shall be fixed with reference to such custom or practice, but in no case at an amount less than the revenue payable in respect of the holding with an addition of twenty per cent. thereon.

94. (1) No settlement under this Chapter shall be final until it has been confirmed by the Local Government.

(2) The local Government shall, when confirming the settlement, fix the term thereof.

(3) Any assessment may be revised, if the Local Government so directs, at any time before the settlement is confirmed, and in such case the revised assessment shall be declared, and the provisions of secs. 64 to 79 (both inclusive) shall apply.

Clause (e) :—See sec. 87 of the N.-W P. and Oudh Land Revenue Act, given above under clause (d). Vide also secs. 59 and 96 of the same Act, which run as follows :—

59. Whenever the Local Government thinks that any district or other local area liable to be brought under settlement should be so brought, it shall publish a notification to that effect, and every such local area shall be held to be under settlement from the date of the notification until the issue of another notification declaring settlement operations to be closed therein.

96. When the term of settlement fixed for any mahal or class of mahals is less than that fixed for the local area in which they are situated and such term expires, the Collector shall assess and settle such mahals in accordance with rules made under section 234.

Clause (f) :—See sec. 36 of the N.-W. P. and Oudh Land Revenue Act III of 1901.

If after the commencement of this Act a person becomes an ex-proprietary tenant, the rent payable by him will be fixed under sec. 36 of the N.-W. P. and Oudh Land Revenue Act, and the rent so fixed will not be liable to enhancement or abatement for a period of ten years, except by order of a Settlement Officer under sec. 87 of the same Act (sec. 36, N.-W. P. and Oudh Land Revenue Act) or under this clause.

Clause (g) :—Secs. 11 and 12 of the Northern India Canal and Drainage Act VIII of 1873 run as follows :—

Sec. 11 :—"Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under sec. 8, takes place, may claim an abatement of

the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding."

Sec. 12 :—"If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

"Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds."

Rules for enhancement of rent :—vide Appendix B.

Enhancement and abatement of rent of ex-proprietary tenants.

42. (1) The landholder of an ex-proprietary tenant may sue for enhancement of rent on one or more of the following grounds, and on no others :—

(*a*) that the rate of the rent paid by such tenant is more than four annas in the rupee less than the rate generally payable by non-occupancy tenants for land of similar quality and with similar advantages in the neighbourhood ; or

(*b*) that the productive powers of the land held by the tenant have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the tenant ; or

(*c*) that the area of the tenant's holding has been increased by alluvion or by the tenant's encroachments.

(2) Any such tenant may sue for abatement of rent on one or both of the following grounds, and on no others :—

(*d*) that the productive powers of the land held by the tenant have been decreased by any

cause beyond his control during the currency of the present rent ; or

(*e*) that the area of his holding has been decreased by diluvion, or by encroachments, or by the taking up of land for a public purpose, or a work of public utility.

This section corresponds to secs. 13, 14, 15 and 17 of Act XI of 1881.

Sub-section (1) :—

Suit by fractional co-sharers :—See under sec. 40, sub-section (1).

A tenure was held under a zamindari which originally formed one entire estate. The estate was subsequently partitioned by the revenue authorities into four several estates. The rent of the tenure was thereupon alotted proportionately to each of the four estates thus formed, although the land forming the tenure remained undivided. In a suit for enhancement of the rent of the tenure brought by the proprietor of some of the estates, it was held that the effect of the partition of the parent estate was to create separate and distinct tenures out of the original single teuure under the proprietors of each of the estates ; that the proprietors of the several estates were not *joint* landlords of the tenure within the meaning of sec. 188 of the Bengal Tenancy Act ; and that therefore a suit for enhancement of rent would lie by a proprietor of one of the estates in respect of the rent alotted to his estate (*Hem Chandra Chowdhry* v. *Bhaduri*, I. L. R., 26 Calc., 832).

Time from which enhancement or abatement takes effect :—See sec. 39, p. 101 *ante*.

Clause (a) :—

'Rate generally payable' :—These words mean the rate generally prevalent or the rate paid by the majority of the ryots in the neighbourhood (*Sadhoo Singh* v. *Ramanoograha Lal*, 9 W. R., 83). They do not mean the average rate, but the rate actually paid and current in the village (*Shital Mondal* v. *Prossonnamoyi Debya*, I. L. R., 21 Calc., 986). The adoption of an average rate from different rates is not a correct mode of fixing the proper rate (*Sumeera Khatoon* v. *Baboo Gopal Lall Tagore*, 1 W. R., 58 ; *Rowshun Bibee* v. *Chundur Madhub Kur*, 16 W. R., 177 ; *Audh Beharee Singh* v. *Dost Mahomed*, 22 W. R., 185). But in one case it was held that if a generally prevailing rate cannot be found, the currency of the different rates being so nearly equal as to make it impossible to say which is the prevailing rate, the average of the different rates current in the village may be taken and treated as the prevailing rate

(*Shaikh Dena Gazee* v. *Babu Mohinee Mohun Doss*, 21 W. R., 157). The judge should find specifically what is the prevailing rate and should not give a decree for a 'fair rate' (*Pelaram Kotal* v. *Nund Coomar*, 6 W. R., Act X, 45). In a suit for enhancement of rent on the ground that the defendant pays at a lower rate than that paid by the neighbouring ryots of the same class for similar lands, if it be found that the prevailing rate is higher than the rate paid by the defendant, though lower than the rate claimed in the plaint to be the prevailing rate, the Court ought to give a decree at the actual rate found to be paid by the neighbouring ryots (*Akul Gaza* v. *Amunooddeen*, 5 C. L. R., 41). In a suit for enhancement where the ground relied on is the prevailing rate paid by the adjacent occupiers of similar land, such ground cannot be established by the probability, or even the certainty, that if the rents of the neighbouring occupants were readjusted they would come up to the rate claimed (*Brindabun Dey* v. *Bisona Bibee*, 13 W. R., 107). The evidence of three patwaris who put in their jamabandis showing the rates paid by almost all the ryots, i. e., the majority, was held sufficiently to prove the prevailing rate (*Priag Lall* v. *Brockman*, 13 W. R., 346). *Patwarian* and *abwabs* must not be taken into consideration in finding what is the prevailing rate (*Barmah Chowdhry* v. *Sreenund Singh*, 12 W. R., 29) for they are not rent [see notes on 'abwabs' under sec. 4 (3)].

'Non-occupancy tenants' :—Under secs. 4 (7) and 19 sub-tenants, thekadars and tenants in Sir lands are also non-occupancy tenants. But it seems that the words "non-occupancy tenants" as used in this clause do not include sub-tenants, thekadars and tenants in Sir lands.

'Land of similar quality' :—*i. e.*, with regard to soil and capacity. Where the holding of a cultivator consists of several descriptions of land, the enhancement should be determined by comparing each description of land with similar adjacent land held by the same class of cultivators (*Mitho Lall* v. *Seeta Ram*, 1 Agra, Rev., 40).

'Similar advantages' :—A tenant of unirrigated land, if the landlord make that land irrigable without cost to the tenant, must pay at the rates paid by other similar tenants for irrigable lands in the neighbourhood (*Ikram Ali* v. *Baboo Lall*, 1 N.-W. P., 178). The ryot should not be called upon to pay to the landlord, under the name of rent, what is in fact not rent, but the produce of his own labour and capital sunk in the land (*Noor Mahomed Mundul* v. *Hurriprosanno Roy*, W. R., 1864, Act X, 75).

'In the neighbourhood' :—These words cannot so narrowly be construed as to confine the enquiry to places bordering on the land, or even lying very near or close to it (*Taija Mull* v. *Oomrao*, 1 Agra, Rev., 64). The general rule may be stated to be that the plaintiff is not on

the one hand restricted to a comparison with lands immediately contiguous, and must not on the other pick and choose particular places, but should consider the rates prevailing in all the neighbouring places which are similarly circumstanced (*Dena Gazee* v. *Mohinee Mohun Doss*, 21 W. R., 157).

Clause (b) :—

'**Increase in productive powers**' :—does not mean capacity for realising a higher rent for building or other purposes ; but an increase of the productive powers of the land itself (*Bissessur Chuckerbutty* v. *Wooma Churn Roy*, 9 W. R., 122). A casual increase in the fertility of land is not a ground for enhancement (*Kristo Mohun Pattur* v. *Huree Sunkur Mookerjee*, 7 W. R., 235). Increase in the productive powers must be either permanent or likely to last for a considerable time (*Khajah Abdool Gunnee* v. *Bhuttoo Seikh*, 22 W. R., 350). Increase of productive power, as a ground of enhancement, must be an agency subsisting and operative at the time when the suit for enhancement is brought (*Brojonath Tewaree* v. *Grant*, 22 W. R., 13). In determining whether an increase has been made in the productive powers of the land, an average of four or five years should be taken ; the probable result of an exceptionally bad season should not be taken into consideration (*Sreesh Chunder Doss* v. *Assimonissa*, 7 W. R., 234). The mere fact that the land has improved in productive powers will not entitle the plaintiff to a decree for enhancement. He must prove that the productive powers of the land have increased to an extent above what the defendant pays for it, and must give some evidence or data upon which the Court can decide what is a fair and equitable rate (*James Hills* v. *Jendar Mundul*, 1 W. R., 3).

'**Improvement**' :—see sec. 4 (12) and notes thereunder, pp. 25 to 28 *ante*.

'**Otherwise than by the agency or at the expense of the tenant**' :—If the tenant's expenditure has caused an increase in the productive power of the land, such expenditure once made cannot permanently bar enhancement of rent, but after the lapse of such a time as may be fairly estimated as sufficient to enable him to recover his outlay and a just share of profit in respect of it, his rent may be enhanced on any legal ground (*Mujlis* v. *Moher*, 3 Agra, 223). Where a landlord provides facilities for irrigation, of which the tenants may, without expense, avail themselves, bringing the water to their holdings, he may be allowed to enhance the rent (*Ikram Ali* v. *Baboo Lall*, 1 N.-W. P., 178). If a zamindar has, before the construction of a well by tenant, provided sufficient means of irrigation, he will be entitled

to receive rent at the rate payable by the cultivators of the same class as his tenant for land with the like facilities for irrigation in places adjacent, and will not be deprived of the right to claim rent at irrigated rates because the cultivator does not choose to avail himself of the irrigation provided for him, or thinks fit to make an outlay on the construction of a well which will not materially increase the productive powers of the holding to a greater extent than they would have been increased had the cultivator availed himself of the means of irrigation placed at his disposal by the Zamindar (*Sheo Churn* v. *Bussunt Singh*, 3 N.-W. P., 282 ; *Ramjuthun Singh* v. *Mehdee*, Agra, F. B, 258). An increase in the productive power of the land, occasioned by an embankment, constructed at the expense of Government, for excluding the sea from flooding the land, is a ground of enhancement (*Jadub Chunder Haldar* v. *Etwaree Lushkar*, Marshall's Reports. 498 ; 2 Hay's Reports, 599). Where it is found that the productive powers of a holding have been increased at the expense of the tenant, and it is not found that they have increased otherwise, no grounds of enhancement are shown (*Ounda* v. *Raheem Shere Khan*, 3 N.-W. P., 138). But the fact that at a distant time the ryot or his ancestors have, by their own agency or at their own expense, made wells or effected improvements, is not a legal bar to the landlord's right to enhance (*Lalla Sheo Narain* v. *Oodhun Singh*, 1 N.-W. P., 180). The *onus* in a suit for enhancement on the ground that the productiveness of the land has increased rests on the plaintiff who must prove that the productiveness was increased otherwise than by the agency or at the expense of the ryot (*Poolin Beharee Sein* v. *Watson*, 9 W. R., 190).

Clause (c) :—

'Alluvion' :—See under sec. 40 (1), p. 102 *ante*.

'Tenant's encroachments' :—See under sec. 40 (1), p. 103 *ante*.

Sub-section (2) :—

An abatement of rent implies the reduction of the rent payable for the holding, if not permanently, at all events for an indeterminate period, the rent as abated being substituted for the original rent, and continuing to be the rent of the holding until altered by agreement or by further order. A tenant cannot sue on any ground for a reduction of rent for a particular year only and having no effect beyond that year on the rent payable for the holding (*Beni Prasad Kuari* v. *Dukkhi Rai*, W. N., 1901, p. 69).

Suit for abatement of rent by one of several joint tenants :—Where there are several joint tenants of a holding one of them cannot sue alone for abatement of rent (sec. 194).

Clause (e) :—

'Diluvion' :—See under sec. 40 (2), p. 104 *ante*.

'By the taking up of land for a public purpose or a work of public utility' :—See under sec. 40 (2).

Limitation, jurisdiction, suit, appeal, review and revision :—There is no period of limitation for suits under this section (vide 4th Schedule, Group C, Serial Nos. 22 and 23) For other matters vide under sec. 40.

Court Fee :—See under sec. 40.

Rules for enhancement of rent :—vide Appendix B.

Enhancement and abatement of rent of occupancy tenants.

43. (1) The landholder of an occupancy tenant may sue for enhancement of rent on one or more of the following grounds, and on no others :—

(*a*) that the rate of the rent paid by such tenant is below the prevailing rate paid by occupancy tenants for land of similar quality and with similar advantages ; or

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent ; or

(*c*) that the productive powers of the land held by the tenant have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the tenant ; or

(*d*) that the area of the tenant's holding has been increased by alluvion, or by the tenant's encroachments.

(2) Any such tenant may sue for abatement of rent on one or more of the following grounds, and on no others :—

(*e*) that there has been a fall in the average local prices of staple food-crops during the currency of the present rent ; or

(*f*) that the productive powers of the land held by the tenant have been decreased by any cause beyond his control during the currency of the present rent ; or

(*g*) that the area of his holding has been decreased by diluvion, or by encroachments, or by the taking up of land for a public purpose, or a work of public utility.

This section corresponds to secs. 13, 15 and 17 of Act XII of 1881.

Suits for enhancement by fractional co-sharers :—Vide under sec. 42.

Time from which enhancement takes effect :—Vide sec. 39, p. 101 *ante*.

Clause (a) :—

'Prevailing rate' :—See notes on heading 'rate generally payable' under sec. 42, sub-section (1), clause (*a*).

'Similar quality' :— See under sec. 42, sub-sec. (1), clause (*a*).

'Similar advantages' :—See under sec. 42, sub-section (1), clause (*a*).

Selection of land for comparison :—See sec. 44.

After the words 'similar advantages' in clause (*a*), there were in the Bill the words 'in the neighbourhood,' but the Select Committee omitted these words with the following remarks :—" The words 'in the neighbourhood' have been omitted. We have restored the provisions of sec. 14 of Act XII of 1881. Under the present system of settlement, circles of similar land are always demarcated with great care by the Settlement Officer, and no better limitation of the area in which prevailing rates are to be ascertained can be devised : in the last resort, to prevent too narrow an area being selected, the Committee would allow comparison, as at present, to be extended to the tahsil, or where the village is on its borders, to an adjacent tahsil. In Act X of 1859 the words used were 'in the places adjacent,' and it was found that the Courts limited the area of comparison to the villages on the borders of the village in question. It was to enlarge the area of comparison that in Act XVIII of 1873, sec. 14 (*c*) was introduced allowing the comparison to extend to the whole tahsil, and that provision has worked successfully. We are unable to suggest any other limitation ; we consider the words 'in the neighbourhood' in sec. 40 (1) (*a*) of the Bill afford too limited a scope for comparison, and are liable to the same

misinterpretation as the expression 'in the places adjacent' used in Act X of 1859. In our experience the Courts are far more apt to limit, than to extend unduly, the area of comparison, and sec. 40 (b) (now sec. 44 of this Act) has been drafted accordingly." (Report of the Select Committee printed at p. 59 of the N.-W. P. and Oudh Gazette dated 22nd June, 1901).

Clause (b) :—The Select Committee in their report printed at p. 60 of the N.-W. P. and Oudh Gazette, dated 22d June, 1901, say :—"Exception has been taken to clause (*b*) on the ground of the difficulty of determining the average prices of food grains, and their omission has been suggested. They are, however, only an adaptation of clause (g) of sec. 13, Act XII of 1881. As in determining the enhancement of occupancy rents, comparison is limited to rents paid by other occupancy tenants, it is necessary in the interests of the landholder and State to provide for enhancement on the ground of the increase in the value of the produce due to a rise in prices. In the absence of such a provision, the rents of occupancy tenants have a tendency to be stereotyped, allowing the occupancy tenant to appropriate the whole of the increase in the letting of the land due to such increase in the value of the produce, a privilege to which he is not by law or custom entitled. The difficulty in determining the rise in prices is one that must be accepted, and it will be necessary to assist the Courts in dealing with it by rules corresponding to those embodied in sec. 40 of the Bengal Tenancy Act."

Clause (c) :—

Increase in productive powers :—See under sec. 42, sub-section (1), clause (*b*).

'Improvement' :—See sec. 4 (12) and notes thereunder, pp. 25 to 28 *ante*.

'Otherwise than by the agency or at the expense of the tenant' :—See under sec. 42, sub-section (1), clause (*b*).

Clause (d) :—

'Alluvion' :—see under sec. 40 (1), p. 102 *ante*.

'Tenant's encroachments' :—see under sec. 40 (1), p. 103 *ante*.

Sub-section (2), clause (g) :—

'Diluvion' :—See under sec. 40 (2), p. 104 *ante*.

'By the taking up of land for a public purpose, or a work of public utility' :—See under sec. 40 (2).

Limitation, jurisdiction, suit, appeal, review and revision :—There is no period of limitation for suits under this section (vide 4th Schedule, Group C, serial Nos. 24 and 25). For other matters vide under sec. 40.

Court Fee :—See under sec. 40.

Rules for enhancement of rent :—vide Appendix B.

Selection of land for comparison.

44. The land regarding which a suit for enhancement or abatement of rent has been instituted under section 43 shall, for the purposes of clause (*a*) of that section, be compared—

(*a*) when the local area within which the land is situated has been divided by the Settlement Officer into circles of like capacity and soil, with land of similar quality and with similar advantages, situated in the same circle ;

(*b*) when the said local area has not been so divided by the Settlement Officer, with land of similar quality and with similar advantages in the same pargana or in a pargana immediately adjacent.

This section corresponds to sec. 14 of Act XII of 1881.

See report of the Select Committee given under heading 'selection of land for comparison' under sec. 43, sub-section (1), clause (*a*).

Clause (a) :—Rates fixed at the time of the settlement are to be considered as having been fair and equitable at the time (*Karamat Ali Khan* v. *Dullail Singh*, 2 S. D. A., 1864, p. 361).

Clause (b) :—

'Similar quality' :—See under sec. 42, sub-section (1), clause (*a*).

'Similar advantages' :—See under sec. 42, sub-section (1), clause (*a*).

Joinder of tenants in suits relating to enhancement or abatement of rent.

45. (1) A suit for enhancement or abatement of rent may be instituted against or by any number of ex-proprietary or occupancy tenants collectively :

Provided that all such tenants are tenants to the same landholder and all the holdings in respect of

which the suit is instituted are situated in the same mahal.

(2) No decree shall be passed in any such suit affecting the interests of any person unless the Court is satisfied that he has had an opportunity of appearing and being heard.

(3) The decree shall specify the extent to which each of the tenants is affected thereby.

This section is altogether new and corresponds to sec. 93 of the Punjab Tenancy Act. Compare also with sec. 90 of the N.- W. P. and Oudh Land Revenue Act.

Sub-section (1) :—The Select Committee in their report printed at p. 62 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"This section allows of a procedure in cases of enhancement and abatement of rent which has for many years been legalized for the trial of such cases by settlement officers. We believe that the procedure is one which is convenient to both landholder and tenant, and tends to widen the basis on which the decisions of the Courts are founded, and to render them more equitable and consistent. With safeguards provided in sub-sections (2) and (3) and in sec. 174 (now sec. 172 of this Act) we see no reason to fear that the procedure can be abused to the detriment of the tenants. Under the existing law, when a landholder sues several of his tenants for enhancement, the several cases are, as a matter of fact, though not formally, tried together : the Officer who tries the case inspects the locality once and for all, makes use of the rates at which he arrives for the purpose of all the cases, and disposes of them in one judgment filed with the record of one case to which reference is made in the judgments passed in the other cases."

In order to be entitled to sue collectively under this section three things are necessary :—(1) The tenants suing or being sued must be of the same kind, in other words, exproprietary and occupancy tenants cannot sue or be sued collectively. (2) The tenants must be tenants to the same landholder. (3) All the holdings in respect of which the suit is instituted must be situated in the same mahál.

'Same landholder' :—In joint and *ijmáli* máhals all the tenants are tenants of the same landholder, the whole body of co-sharers therein being considered to be a unit.

In a case in which 121 proprietors sued 236 tenants for enhancement of rent under sec. 93 of the Punjab Tenancy Act, it was held that as

regards appeal, a single decree passed against 200 separate tenants should be regarded as made up of 200 separate and distinct decrees each of which affected only one tenant or one set of joint tenants, and that a reversal in appeal of the joint decree as regards some only of the tenants had not the effect of modifying the original decree, as to all (R. J., No. 1, P. R., 1890).

Progressive enhancements.

46. In decreeing an enhancement of the rent of an ex-proprietary or occupancy tenant, if the enhancement is not less than one-fourth of the rent, and if the Court considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the tenant, the Court may direct that the enhancement shall take effect by yearly increments extending over any number of years not exceeding five.

This section is altogether new and corresponds to sec. 36 of the Bengal Tenancy Act.

The Select Committee in their report printed at p. 60 of the N.-W. P. and O. Gazette dated 22d June, 1901, say :—"We accept the principle of allowing the enhancement to take effect by yearly increments when it is very great. It is a principle on which Government acts in the assessment of revenue and should be extended to the enhancement of rents. But we consider there should be some limitations to its working. We have therefore redrafted the clause on the lines of sec. 36 of the Bengal Tenancy Act, with the further limitation that progressive enhancements shall only be allowed when the rise is not less than 25 per cent—a limit which Government has laid down in the case of enhancements of Revenue."

'**One fourth of the rent**' :—*i. e.*, ¼ of the rent which was payable by the tenant before the decree for enhancement was passed.

Non-occupancy Tenants.

Enhancement of rent of non-occupancy tenant by agreement.

47. The rent of a non-occupancy tenant, not being a tenant in sír land, a sub-tenant or thekadar, may be enhanced by agreement between such tenant and his landholder on the following conditions :—

(*a*) the agreement for the payment of enhanced rent shall be by registered instrument; and

(*b*) the tenant shall be entitled to hold the land at the enhanced rent for a term of not less than five years.

This section is altogether new.

'Sub-tenant' :—Vide sec. 4 (7), p. 19 *ante*.

'thekadar' :—Vide sec. 4 (6), p. 19 *ante*.

Enhancement of the rent of a tenant in Sir land, of a sub-tenant, or of a thekadar:—Enhancement of the rent of a tenant in Sir land, of a sub-tenant, or of a thekadar can be made by agreement, and such agreement, in order to have effect, must, in view of the provisions of sec. 35, be registered. But such tenants will not be entitled to the benefits of clause (*b*) of this section.

Clause (a) :—

'Registered' :—Vide sec. 4 (11) and notes thereunder, p. 20 *ante*. under which a suit for enhancement or abatement of rent will lie during the five years mentioned in this clause.

As to right on change of holding or variation of rent during the five years mentioned in this clause vide sec. 55.

Enhancement and abatement of rent of non-occupancy tenant by suit.

48. Notwithstanding anything contained in clause (*b*) of section 47, a suit shall lie for the enhancement or abatement of the rent of a non-occupancy tenant—

(*a*) on the grounds specified in clauses (*d*) and (*g*) of section 43 in respect of the enhancement or abatement of the rent of an occupancy tenant; or

(*b*) as provided by section 11 and 12 of the Northern India Canal and Drainage Act, 1873.

This section is altogether new.

Clause (b) :—For secs. 11 and 12 of the Northern India Canal and Drainage Act see under sec. 41 sub-sec. (1), clause (*g*).

Limitation, jurisdiction, suit, appeal, review and revision:—There is no period of limitation for suits under this section

(Vide 4th Schedule Group C, serial Nos. 26 and 27). Suits under this section should be filed in the court of the Assistant Collector in charge of the sub-division,provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (*b*)]. But such suits would be disposed of by an Assistant Collector of the 1st class empowered by the Local Goverment in that behalf (sec 172) or by the Collector (sec. 173).

An appeal from a decree of an Assistant Collector of the 1st class or from that of a Collector [sec. 180 (1) will lie to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, serial No 53). A second appeal on any of the grounds specified in sec. 584 of the Code of Civil Procedure will lie to the Board from a decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs (sec. 181) within ninety days from the date of the decree appealed against (4th Schedule, Group E. serial No. 54.) As to review vide secs. 183 and 184. As to revision vide sec. 185.

Court Fee :—The Court fee for a suit to enhance the rent of a non-occupancy tenant is the same as in the case of an occupancy tenant under the Court Fees Act, 1870 (4th Schedule, Group C, Serial No.26), for which see under sec. 40-

The Court-fee for a suit for abatement of the rent of a non-occupancy tenant will be computed under sec. 7 (xi) (*f*) of Act VII of 1870 according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

Exceptional Provisions.

Variation of rent under lease for period exceeding term of land holder's engagement.

49. (1) Notwithstanding anything hereinbefore contained, when any lease is granted, or any agreement is entered into, by any landholder under engagement with goverment for his land, fixing the rent of land for any period exceeding the term of snch engagement, and such term expires, such lease or agreement shall—

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landholder, unless the tenant agrees to pay

such rent as the Collector may, at the suit of the landholder, determine to be fair and equitable ; and

(*b*) when such revenue is, on the expiration of such term, reduced—be voidable at the option of the tenant, unless the landholder agrees to accept such rent as the Collector may, at the suit of the tenant, determine to be fair and equitable.

(2) When the local area within which the land is situated is under settlement, the Settlement Officer shall exercise the powers of the Collector under this section.

This section corresponds to sec. 29, Act XII of 1881.

Under this section a declaration that the lease or agreement is void does not involve the ejectment of the tenant. If at the time that the lease or agreement is declared void the tenant has acquired occupancy rights, he will not lose such rights because of such declaration, but the rent of such tenant may be fixed under sec. 95. But if he has not acquired occupancy rights at the time that the lease or agreement is declared void, his rent may be fixed under sec. 95 and he will be liable to ejectment under secs. 57 and 58.

Variation of rent under this section will not entitle the tenant to the benefits of sec. 50, because sec. 55 is applicable only when, under the provisions of this Act, any tenant *is declared entitled* to hold for a specified period.

K, in a *sulahnamah* filed in Court in 1856, agreed that C should remain in possession in perpetuity of certain lands at a rent varying with the *jama* imposed at revision of settlement. K and his representative in interest always treated C and his successor as farmers under this agreement and the rent was varied with the *jama* at settlement. *Held*, that this agreement was tantamount to a perpetual lease which was not voidable under sec 29, Act XII of 1881, and that K's representative in interest was estopped from ejecting C's successor as a tenant-at-will (*Madho Singh v. Chidda Singh*, 3 L. R., R. R. S., 44).

Limitation, jurisdiction, suit, appeal, review and revision :— There is no period of limitation for suits under this section (vide 4th Schedule, Group C, serial No. 28). Suits under this section should be filed in

the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (b)]. But such suits would be disposed of by an Assistant Collector of the 1st class (sec. 172) or by the Collector (sec. 173). An appeal from a decree of an Assistant Collector of the 1st class or from that of a Colector [sec. 180 (1)] will lie to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th schedule, Group E, serial No. 53). A second appeal on any of the grounds specified in sec 584 of the Code of Civil Procedure will lie to the Board from a decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs (sec. 181) within ninety days from the date of the decree appealed against (4th Schedule Group E, Serial No 54). As to review vide secs 183 and 184. As to revision vide sec. 185.

Court-Fee.—The court-fee will be computed according to the amount of the rent payable under the lease (4th Schedule, Group C, serial No. 28, 6th column).

Remission of rent by Court decreeing arrears.

50. (1) Notwithstanding anything hereinbefore contained, if it appears to a Court making a decree in a suit for arrears of rent that the area of the holding was so decreased by diluvion or otherwise, or that the produce thereof was so diminished by drought, hail, deposit of sand, or other like calamity during the period for which the arrear is claimed, that the full amount of rent payable by the tenant for that period cannot be equitably decreed, the Court may, with the previous sanction of the Collector, allow such remission from the rent payable by the tenant for that period as may appear to it to be just.

(2) An order of the Collector under sub-section (2), giving or refusing sanction to a remission of rent, shall not be questioned in any Civil or Revenue Court.

(3) Nothing in this section shall be deemed to

authorize any remission in the rent payable by a permanent tenure-holder, fixed-rate tenant, or thekadar.

(4) No remission made under the provisions of this section shall be deemed to vary the rent payable by the tenant otherwise than for the period in respect of which such remission was made.

(5) When remission of rent in accordance with the provision of this section materially diminishes the assets of any mahal or patti, the revenue authorities shall take into consideration any claim made by the proprietor for a remission of the revenue payable in respect of such mahal or patti, and shall pass such order thereon as the circumstances of the case may require.

(6) The provisions of this section shall not apply to remissions of rent claimed in alluvial tracts under any local custom providing for such remission in holdings the culturable area of which has been decreased by diluvion, deposit of sand, or the like causes.

This section is altogether new and corresponds to sec. 29 of the Punjab Tenancy Act XVI of 1887 and sec. 19 of the Oudh Rent Act XXII of 1886.

Sub-section (1) :—

'Suit' :—does not include appeal, for an appeal does not commence with a plaint, and no proceeding, even if capable of terminating in a decree, is a suit, if it has not commenced with a plaint (*Venkata Chandrappa* v. *Venkatarama*, I. L. R., 22 Mad., 256 ; see also sec. 582 of the Code of Civil Procedure, which distinguishes 'suit' from 'appeal'). An appellate Court cannot, therefore, allow remission of rent under this sub-section.

Sub-section (6) :—The Select Committee in their report, printed at p. 61 of the N.-W. P. and O Gazette, dated 22nd June, 1901, say :— "In the eastern districts and possibly elsewhere, there is frequently a local custom by which tenants can claim in answer to a suit for arrears a remission of rent on account of injury by diluvion or deposit of sand,

&c. Such cases should be excluded from the provisions of this section and it is not desirable that the Collector should be compelled to pass orders on them."

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

51. (1) When for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, a Collector or Assistant Collector of the first class empowered by the Local Government in this behalf may order that the rents of the tenants holding such land or any portion thereof, mediately or immediately from the proprietor, shall be remitted, or suspended for the period of such remission or suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue the payment of which has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land.

(2) An order passed under sub-section (1) shall not be questioned in any Civil or Revenue Court.

(3) A suit shall not lie for the recovery of any rent of which the payment has been remitted, or, during the period of suspension, of any rent of which the payment has been suspended.

(4) When the payment of rent has been suspended, the period during which the suspension has continued shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of the rent.

(5) If a proprietor or other landholder collects any rent of which the payment has been remitted, or before the expiration of the period of suspension collects any rent of which the payment has been suspended, the whole of the revenue or rent, as the case may be, remitted or suspended in his favour shall become immediately payable by him.

This section corresponds to sec. 23 of Act XII of 1881.

Subsection (5) :—In the fifth line 'revenue' refers to 'proprietor and 'rent' to 'other land-holder.' In the Bill as originally drafted and printed in the N.-W. P. and O. Gazette, dated 17th November, 1900 there were not in this sub-section the words 'proprietor or other' in the first line. But the Select Committee inserted these words "to explain, the meaning of the words 'or rent' in line 5, which refer to the case of a tenant whose rent has been remitted on condition of the remission of his sub-tenants' rent." (Report of the Select Committee, printed at p. 61 of N.-W. P. and O. Gazette, dated 22nd June, 1901.)

Investment of officer with power to settle, reduce, and commute rent.

52. (1) The Local Government, on being satisfied that the exercise of the powers hereinafter mentioned is necessary within any specified area in the interests of public order may, with the previous sanction of the Governor-General in Council, by notification in the Gazette, invest a Collector or Assistant Collector of the first class with the following powers, or any of them, within such area, namely,—

(*a*) power to settle all rents ;

(*b*) power, when settling rents, to reduce rents if, in the opinion of such officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable ;

(*c*) power to commute produce rents into money rents.

(2) An officer invested with powers under this section may be invested with them either generally or with reference to specified cases or classes of cases, and shall have all the powers of a Record Officer under Chapter IV of the North-Western Provinces and Oudh Land Revenue Act, 1901.

N. W. P. & O. III of 1901.

(3) Nothing in this section shall apply to the rents payable by permanent tenure-holders or fixed-rate tenants.

(4) Every order settling or commuting rent under this section shall take effect prospectively from such date as the officer passing the same may direct.

(5) An appeal shall lie against an order under this section as hereinafter provided; but otherwise no order under this section shall be questioned in any Civil or Revenue Court.

This section is altogether new and corresponds to sec. 112 of the Bengal Tenancy Act.

The Select Committee in their report, printed at p. 62 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say:—"We have retained these sections (*i.e.* secs. 52 to 54 of this Act) with certain modifications. Though we anticipate that it will be rarely necessary to put their provisions in force, we are of opinion that their presence in the tenancy law of the Province will have a salutary effect in restraining that small minority of landlords who show no consideration to their tenants, and we believe it to be possible that circumstances might arise in which it would be advantageous in the interests of public order that the Local Government should have the power of stepping in and settling the rents of all classes of tenants authoritatively. The apprehension that such a power would be made use of without real necessity seems to us without foundation, even without the provision requiring the sanction of the Governor General in Council before action can be taken under this section."

Sub-section (2):—Sec. 47 of the N.-W. P.and Oudh Land Revenue Act will apply to the entries in the papers prepared by the officer invested with the powers of a Record Officer.

Sub-section (5) :—

'As hereinafter provided' :—i. e., according to sec. 178, under which an appeal will lie to the Board from an order under this section.

'No order under this section shall be questioned in any Civil or Revenue Court' :—The order under this section will be an order as to rent only. But orders passed in the capacity of a Record Officer (which are not orders under this section) will, in respect of appeal, be governed by the provisions of the N. W. P. and Oudh Land Revenue Act III of 1901.

Enhancement or abatement of settled rents.

53. When the rent of a holding is settled or commuted under the last preceding section, it shall not—

(*a*) in the case of an ex-proprietary or occupancy holding, be liable to enhancement or abatement, except on the grounds spcified in clauses (*f*) and (*g*) of section 41, for ten years from the date on which the rent settled or commuted takes effect; and

(*b*) in the case of a non-occupancy holding, other than the holding of a thekadar, and subject to the provisions of this Act in respect of sub-leases, be liable to enhancement or abatement, except on the grounds specified in section 48, for seven years from the date on which the rent so settled or commuted takes effect; unless the period of the settlement of the mahal in which the holding is situated shall sooner come to an end.

This section is altogether new and corresponds to sec. 113 of the Bengal Tenancy Act.

Clause (b) :—

'Non-occupancy holding' :—See sec. 19 and notes thereunder.

'Subject to the provisions of the Act in respect of sub-leases' :—These words show that nothing in this clause would entitle a sub-tenant to hold on at the settled or commuted rent for a period longer than the term of his sub-lease.

54. The order of an officer so settling or commuting the rent of a non-occupancy tenant shall, except in the case of a tenant in sír land, a sub-tenant, or a thekadár, have the same force and effect as a registered lease for seven years under the provisions of section 11.

Effect of order respecting non-occupancy tenant.

This section is altogether new.

"Shall have the same force and effect as a registered lease for seven years under the provisions of Section 11":— If during these seven years the holding of the tenant is changed or the rent payable in respect thereof is varied, he will be entitled under sec. 55 to hold under the substituted contract for seven years or for such longer period as the parties may agree upon, and in such case this latter period of seven or more years will count towards the accrual of occupancy rights to him, for there is no mention in sec. 55 that the period to which the tenant is entitled to hold under the substituted contract will have the same force and effect as a registered lease for seven or more years under the provisions of sec. 11. But if the change of holding or variation of rent is made by a *registered lease* for seven or more years, the period fixed by such lease will, under sec. 11, not count towards the accrual of occupancy rights.

Rights on Change of Holding or Variation of Rent.

55. When, under the provisions of this Act, any tenant is declared entitled to hold for a specified period, and when during such period the holding of such tenant is changed, or the rent payable in respect thereof is varied, such tenant shall be entitled to hold under the substituted contract for the full period for which he was originally declared entitled to hold under the provisions of this Act, or for such longer period as the parties thereto may agree upon.

Rights on change of holding or variation of rent.

This section is altogether new

'Under the provisions of this Act':—Vide secs. 47, 54 and 68.

'Tenant':—This section does not apply to sub-tenants, thekadars

and tenants in Sir land, as such tenants are not declared entitled under any provision of this Act to hold for a specified period. Such tenants are, on the contrary, excepted in secs. 47, 54 and 68.

'Is declared entitled':—This section would apply only to periods for which a tenant is *declared* entitled to hold under the provisions of this Act, and not to periods of holding agreed upon between a landholder and his tenant.

Change of holding or variation in rent:—In order to entitle a tenant to the benefits of this section it seems that the change of holding or variation in rent must have been made by the landholder and not by any decree or order of a court.

CHAPTER V.

EJECTMENT, SURRENDER, AND ABANDONMENT.

Grounds of Ejectment.

56. No tenant shall be ejected otherwise than in accordance with the provisions of this Act.

Ejectment to be according to law.

This section corresponds to sec. 34 (*b*) of Act XII of 1881.

If the period for which a tenant is entitled to hold expires and he does not voluntarily quit his holding, his landholder cannot re-enter on the holding without ejecting him under the provisions of this Act. But when the interest of a sub-tenant is extinguished with the extinction of the interest of the tenant from whom he holds, he shall vacate his holding accordingly (sec. 30), and the landholder of the tenant may enter on the holding without ejecting him in due course of law. But a tenant holding under a lease for a fixed period may, on the expiration of the term of his lease, and a tenant not bound by a lease or agreement to hold for any fixed period may, at the end of any agricultural year, surrender his holding (sec. 83).

Though under sec. 95 (*n*) of Act XII of 1881 a tenant not entitled to hold for the next agricultural year who has been wrongfully dispossessed by his landholder could apply for recovery of possession of his holding, but under this Act he cannot successfully bring a suit for recovery of possession: he will be entitled to get a decree for compensation for wrongful dispossession and for costs only [sec. 79 (1), Proviso].

A tenant in possession after the expiry of his lease can only be ejected in due course of law (*Sofaoll Khan* v. *Woopean Khan*, 9 W.R., 123; *Ooma Lochun Mojoomdar* v. *Nittye Chand Poddar*, 14 W. R., 467; *Jumant Ali Shah* v. *Chowdhry Chutturdharee Sahee*, 16. W. R., 185: *Pirthee Nath* v. *Sheo Sahai Singh*, S. D. B. R., No. 33 of 1891). Dispossession by the landlord of his own motion is absolutely contrary to law (*Lachman Prasad* v. *Bal Singh*, I. L. R., 5 All., p. 157, at p. 159). A landholder, alleging that by local custom where land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land re-appeared the landholder was entitled to

possession thereof; that certain land belonging to him had been submerged and the occupancy tenant thereof had ceased to pay rent for it; and that such land had re-appeared and had come into his possession under such custom; sued such tenant for a declaration of his right to the possession of it. *Held* that notwithstanding the sub-mergence of the land, the tenancy still subsisted; and as the tenant could not lose his right to the land except by relinquishment or ejectment under the provisions of Act XII of 1881; and as the custom set up by the landholder was opposed to the provisions of sec. 34 (*b*) of that Act; the suit was not maintainable (*Kupil Rai* .v *Radha Prasad Singh*, I. L. R., 5 All., 260; *Kirpal Rai* v. *Radha Prasad Singh*, W. N., 1883, p. 14). But it is not absolutely necessary for a lessor to take legal measures for obtaining possession of the demised property on accrual of right of re-entry. He may take possession thereof if the lessee is willing to give up the holding (*Great Eastern Hotel Company* v. *Collector of Allahabad*, 2 Agra, Ex., O. C., 1). Legal proceedings are necessary only when the tenant is unwilling to go (*Sita Ram* v. *Chedambi Lal*, 1 L. R., R. R. S., 35). Where, upon the expiry of the term of a lease, but without the notice of ejectment required by sec. 36 of Act XII of 1881 having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease, it was held that the tenancy of the first lessees did not cease upon the determination of the term of their lease, and that the second lease was wrongfully given (*Sitab Dei* v. *Ajudhia Prasad*, I. L. R., 10 All., 13; W. N., 1887, p. 269.)

Where a lease provided—that in case of a default in the payment of rent, the lessor should have the power of re-entry, the lessor was bound to exercise this power according to the provisions of the law (*Solano* v. *Hoormut Bahadoor*, I Hay s Reports, 573)

No suit will lie for the ejectment of a tenant by cancelment of his lease for non-payment of rent, but when a decree for arrears of rent has been obtained, the ejectment of the tenant can only be effected in accordance with the provisions of Section 35 of Act XII of 1881 (corresponding to Section 57 of this Act) [*Rajbansi Kuar* v. *Pheku Misr*, W. N., 1882, p. 191: *Musammat Mohra* v. *Baldeo Sahai*, S. D. B. R., No. 5 of 1891.]

On a compromise of an application for ejectment under sections 34 *et seqq* of Act No. XII of 1881, the parties agreed that the defendants should be regarded as tenants at fixed-rates of the plaintiff, but that if at the end of any year the whole or any portion of the rent remained unpaid the plaintiff would be at liberty to eject the defendants in accordance with the rules of the Court (*hasb-qaidá-adálat*). *Held* that the

plaintiff could not sue in a Court of Revenue to cancel the lease and eject the defendants, but was bound to follow the procedure laid down in sec. 34 and the following sections of Act No. XII of 1881 (*Deo Saran Singh v. Baldeo*, W. N., 1902, p. 94).

The fact of a tenant's taking a mortgage of land comprised in his holding from his landlord does not of itself extinguish the tenancy by merging the rights of the tenant in those of the mortgagee. The effect of such a mortgage on the tenant's right would be merely that they would be in abeyance. When the landlord redeemed, the parties would revert to their former position, and the landlord would not be entitled to get possession of the land except by ejecting the tenant in due course of law (*Kallu v. Diwan*, W.N., 1902, p. 157.)

Where an order was passed under sec, 39 of Act XII of 1881, dismissing an application to contest a notic of ejectment, but no action was taken under section 40 of that Act before Act II of 1901 came into force, it was held that the tenant could not be ejected upon an application under sec. 71 of the latter Act, and that the landlord must proceeed by suit under that Act (*Nawab Muhmmad Ibrahim Ali Khan v. Bhagwana*, S. D. B. R., No. 3 of 1902).

Remedies for wrongful ejectment:—vide sec. 79.

Grounds of ejectment.

57. A tenant, not being a permanent tenure-holder, shall be liable to ejectment from his holding on one or more of the following grounds, namely,—

(*a*) on the ground that a decree against him or his predecessor in interest for arrears of rent in respect of that holding on account of any agricultural year remains unsatisfied at the expiry of that year ;

(*b*) on the ground of any act or omission detrimental to the land in that holding, or inconsistent with the purpose for which it was let ;

(*c*) on the ground that he or any person holding from him has broken a condition, not inconsistent with the provisions of this Act, and on breach of which he is by special

contract with his landholder liable to be ejected ;

(*d*) on the ground that he has sub-let or otherwise transferred the whole or any portion of that holding in contravention of the provisions of this Act :

Provided that nothing in clause (*d*) shall apply to a fixed-rate tenant.

This section corresponds to secs. 34 and 35 of Act XII of 1881.

'Tenant'—Vide sec. 4 (5) and notes thereunder, p. 16 *ante*.

'From his holding':—Under this section the tenant will be ejected from the whole of his holding. But in a suit for ejectment brought under sub-section (*d*) he may be ejected from a portion only of the holding (sec. 66).

Who can eject:—In *ijmali* land where there are two or more co-sharers, all the co-sharers must join in a suit for ejectment, unless they have appointed an agent to act on behalf of them all, or unless there is any local custom or special contract by which a co-sharer in an undivided property is entitled to receive separately his share of the rent payable by a tenant (sec. 194). But where there are several co-sharers, and each co-sharer receives the rent due in respect of specific fields, it was held that each co-sharer might eject from those fields (*Reference from Collector of Jaunpur*, 1 L. R., R. R. S., 8).

In *Paras Ram* v. *Bholai* (S. D. B. R., No. 21 of 1884) it was held that a landholder who is the sole decree-holder is the landholder, and is entitled to proceed alone to eject the tenant. In *Issar Chandra Datta* v. *Gopal Chandra Das* (I. L. R., 25 Calc. 98 ; 3 C. W. N., 20) it was held that a mere *benamidar* cannot maintain a suit for ejectment, he having neither title to, nor possession of, the property.—Land forming part of the endowment of a *chattram* was brought to sale for arrears of revenue and was purchased by the plaintiffs, who now sued to eject the tenants, who were in occupation of the land. *Held* (1) that the defendants were entitled to plead that the plaintiffs had paurchased *benami* from the managers of the *chattram* ; (2) that the above plea having been substantiated, the plaintiffs were not entitled to maintain the suit (*Tirumalappa Pillai* v. *Swami Naikar*, I. L. R., 18 Mad., 469).

Denial of title no ground for ejectment:—The denial by a tenant of his landlord's title is no ground for his ejectment under this section. Questions of proprietary title would arise in such cases and would be

governed by secs. 198 and 199 of the Act. By the mere fact of such denial he loses his status as a tenant and becomes liable to ejectment by the Civil Court as a trespasser (*Arjan v. Rattu*, W. N., 1886, p. 122). Where the landholder proceeds against the occupier as a trespasser he cannot sue him for arrears of rent due afterwards (*Eshan Chunder Roy v. Khajah Assanoollah*, 16 W. R., 79 ; *Ranee Surnomoyee v Shooshee Mokhee Burmonia*, 11 W. R., P. C., 5). The setting up of a hostile title by a tenant amounts to a forfeiture of all rights of occupancy, and he will be estopped from afterwards setting up such a right (*Mirza Nadir Beg v. Muddurran*, 2. W. R., Act X, 1 ; *Saya Bhama Dasi v. Krishna Chandra Chaterji* I. L. R., 6 Calc. 55).

Clause (a):—

This clause corresponds to sec. 35 of Act XII of 1881.

The Select Committee in their report, printed at p. 63 of the N.-W.P. and O. Gazette, dated 22nd June, 1901 say :—"We have amended the clause so as to make it clear that a tenant shall not be ejected from any land except that on account of which the arrears are due ; that he cannot be ejected before the expiry of the year on account of which the arrears are due ; and that the heir of a tenant who has inherited the holding shall be liable to ejectment if the arrears decreed against his predecessor in interest are not satisfied."

'Predecessor in interest' :—See notes under sub-section (1) to sec. 4, p. 9 *ante*.

Under the old law as interpreted by the Board in *Narain v. Musammat Sakina Bibi* (S. D. B. R., No. 6 of 1898), it was held that sec. 35 Act XII of 1881, permits the ejectment only of the individual tenant against whom the decree was passed : it would not apply in the case of his death before ejectment, to his successor in title. But this ruling is not applicable under the law as laid down in this sub-section, and was dissented from in (*Rai Bahadur Mahabir parshad Narain Singh v. Lala Din and Binda*, S. D. B. R., No. 1 of 1901).

'Rent' :—Vide sec. 4 (3) and notes thereunder. p. 12 *ante*.

'agricultural year' :—Vide sec. 4 (10),p. 20 *ante*.

'Decree for arrears of rent, :—The decree must be a decree of a Revnue Court, which is the only Court that can pass a decree for arrears of rent under this Act (*Kali Charan v. Jwala Prasad*, S. D. B. R., No. 4 of 1889).

'Remains unsatisfied' :—The decree must be satisfied in whole ; part satisfaction of the decree, when refused by the landholder, cannot prevent the ejectment of the tenant under this clause (*Gopal Saran Singh v. Rituraj Rai*, 1 L. R., R. R. S., 11). Payment of part of an unsatisfied decree does not entitle the tenant to retain possession of part

of his holding (*Salig Ram* v. *Ram Dyal*, S. D. B. R., No. 11 of 1892) But where a suit has been brought for arrears of rent in respect of several holdings in possession of a tenant, and the decree in such suit specifies the arrears due in respect of each holding, it seems that the tenant can save his ejectment from a particular holding by paying up the arrears due in respect of it, although the amount so paid is only a part of the whole decretal amount.

The mortgage of a tenant can save the ejectment of the tenant by paying arrears of rent (*Jawhir* v. *Ganpatji*, 1 L. R., R. R. S., 18) ; and on the same principle the sub-tenant can save the ejectment of the tenant. In *Sarada Prasad Chowdhry* v. *Nobin Chandra Dutt* (Marshall's Reports, 417) it was held that a purchaser of a transferable tenure can also save ejectment by making the payment. In *Mahant Kishan Das* v. *Daya Shankar* (S. D. B. R., No. 10 of 1887) it was held that ejectment should be refused when the Zemindar has recovered from a third party arrears of rent due from a fixed-rate tenant, the third party occupying the holding of the ejected fixed-rate tenant.

The ejectment of a tenant under sec. 35, Act XII of 1881, [corresponding to clause (*a*) of this section], on the ground that a decree for arrears of rent remains unsatisfied against him, does not debar the decreeholder from proceeding subsequently to recover the money from the judgment-debtor (*Raja Fateh Singh* v. *Karimulla Khan*, S. D. B. R., No. 17 of 1893). A landlord is not estopped from his right of ejectment for arrears of a previous year by accepting rent for a subsequent year (*Munna* v. *Chinti*, 1 L. R., R. R. S., 10). A tenant who was ejected under sec. 35, Act XII of 1881, but against whom, as was subsequently found, no unsatisfied decree remained, was entitled to be re-instated (*Khub Singh* v. *Amin Singh*, S. D. B. R., No. 19 of 1884).

If money payable under the decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decreeholder, or if payment is made in pursuance of an agreement mentioned in sec. 257A of the Code of Civil Procedure, such payment or adjustment cannot be recognized as a payment or adjustment of the decree by any Court executing the decree, unless it has bean certified to the Court in accordance with the provisions of sec. 258 of the Code of Civil Procedure. (Vide sec. 258 of the Code of Civil Procedure.) The decree must be capable of execution at the time ejectment is sought. If it has become barred by limitation ejectment cannot be ordered.

Ejectment from joint holding :—In cases of joint tenancy, where several tenants are jointly in occupation of a holding, if a decree for arrears of rent is passed against one or some only of the joint tenants

and remains unsatisfied, the judgment-debtor cannot be ejected from any portion of the holding, unless there has been, under sec. 30, a division of the holding or a distribution of rent payable in respect thereof, with the consent of the landholder. So in *Kishan Narayan* v. *Bishambhar Narayan* (1 L. R., R. R. S., 39) it was held that when the holding of a tenant is not capable of demarcation, as no definite area belonging to him can be pointed out, he cannot be ejected from such holding. In *Sheo Darshan* v. *Lachman Das* (1 L. R., R. R. S., 18) it was held that where one tenant out of several co-tenants confesses judgment, and the Zemindár withdraws his claim against the rest, ejectment cannot issue against the joint holding.

Limitation, jurisdiction, application for execution and appeal :—Vide under sec. 59.

Court fee :—Vide under sec. 59.

For the procedure in ejectment on the ground specified in this clause vide secs. 59 to 62.

Clause (b) :—

This clause corresponds to Sec. 34 (c) of Act XII of 1881.

'That holding' :—In order to entitle a land-holder to eject a tenant under this clause from a holding the act or omission must have been in respect to that holding. A tenant will not be liable to ejectment under this clause from other holding in his occupation to which the act or omission does not relate. The Select Committee in their report printed at p. 63 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :— "For 'his holding' we have substituted 'that holding' to confine the ejectment to the holding on which the act or omission took place."

'Act or omission' :—Any act or omission of a sub-lessee or other transferee of the holding, which is detrimental to the holding or inconsistent with the purpose for which it was let to the tenant-in-chief would make the tenant-in-chief liable to ejectment under this clause (Secs. 24 and 64).

'Detrimental to the land in that holding or inconsistent with the purpose for which it was let' :—See notes on 'Agricultural purposes' under Sec. 4 (2) p. 10 *ante*. A usufructuary mortgage of a holding is not an act 'detrimental to the land' or 'inconsistent with the purpose for which it was let' (*Madho Lal* v. *Sheo Prasad Misra*, I. L. R., 12 All., 419) so as to be a ground for ejectment under this clause. But such a mortgage would make a tenant, who is not entitled under this Act to make such a mortgage, liable to ejectment under clause (*d*) of this section. The digging of a well is not detrimental to the land let out for cultivation, or inconsistent with the purpose for which it was let ; but the same cannot be said of the building of a house or planting

of trees (*Bholai* v. *The Raja of Bansi*, I. L. R., 4 All., 174; *Bholai Kurmi* v. *Maharajah Ram Singh*, 2 L. R., H. C. S., 253; *Debi Prasad* v. *Har Dayal*, I. L. R., 7 All., 691; W. N., 1885 p. 205). The digging of a well is, on the contrary an improvement under this Act [Sec. 4 (12)]; but see Sec. 89. Under Sec. 88 "in the absence of a local custom to the contrary no tenant, except a permanent tenure-holder or a fixed-rate tenant, shall be entitled, without the written consent of the landholder, to plant trees." Building by a tenant, on a portion of his holding, of a shed for the accomodation of his cattle used for agricultural purposes and for the herd employed to take care of them, and a wall enclosing such shed, is not an act detrimental to the land or inconsistent with the purpose for which it was let (*Hemraj* v. *Dammar Singh*, W. N., 1888, p. 120). An agricultural tenant at a time when there were no crops growing on his holding, let part of it temporarily to a theatrical company for the purpose of their holding performances thereon. *Held* that this was not an act detrimental to the land or inconsistent with the purpose for which it was let so as to make the tenant liable to ejectment (*Yusuf Ali Khan* v. *Hira*, I. L. R., 20 All, 469; W. N., 1898, p. 114). Where ejectment is ordered it will be from the entire holding, although the act or omission be in respect of some of the plots of land comprised in the holding (*Bholai* v. *The Raja of Bansi*, I. L. R., 4 All., 174). This ruling was held to be applicable only in case when the rent was paid not in respect of each plot of land separately, but in respect of the entire holding. But this distinction is unnecessary under this Act, for in Sec. 65, which lays down the procedure in ejectment on the ground specified in this clause, there is no provision like that in Sec. 66 for ejectment from a portion only of the holding.

Parties to suits under this clause:—In a suit for ejectment on the ground mentioned in this clause the sub-lessee or other transferee must be joined as a party (Sec. 64).

Limitation, jurisdiction, suit, appeal and review:—Suits for ejectment on the grounds specified in clause (*b*) or clause (*c*) of this section should be filed within one year from the time when the forfeiture is incurred or the condition is broken (4th Shedule, Group B, serial No. 13), in the Court of the Assistant Collector in charge of the sub-division; provided that if there is no Assistant Collector in charge of the sub-division, such suit should be filed in the Court of the Collector [Sec. 174 (*b*)]. An appeal will lie to the District Judge from the decree of an Assistant Crllector of the first class under the provisions of sec. 177, within thirty days from the date of the decree appealed against (Indian Limitation Act, XV of 1877, 2nd Schedule, Art. 152); provided that when the amount or value of the subject matter of the suit exceeds five

thousand rupees the appeal will lie to the High Court (Sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act, 2nd Schedule, Art. 156).

For review of judgment vide Sec. 184.

Court fee :—A suit to eject a tenant is a suit for the possession of land within the meaning of paragraph 5, Sec. 7 of the Court-fees Act, 1870, and the valuation of such suit for the purpose of Court-fees and of jurisdiction is the value of the subject matter of the suit, that is to say, of the tenant right, not of the land itself nor of merely one year's rent (*Ram Raj Tewari* v. *Girnandan Bhagat*, I. L. R. 15 All 63 ; W. N. 1892, p. 240). In such suits the plaintiff must state the amount at which he values the subject-matter of the suit, and *ad valorem* fee will be payable on such amount.

For the procedure in ejectment on the ground specified in this clause vide Sec. 65.

Clause (c) :—This clause corresponds to Sec. 34 (*c*), Act XII. of 1881.

'Or any person holding from him' :—The select Committee in their report printed at p. 63 of the N.—W. P. & O. Gazette, dated 22nd June, 1901, say :—"We have inserted in clause (c) the words 'or any person holding from him,' as the tenant is liable for any breach by his sub-tenant of the nature referred to in that clause".

'Not inconsistent with the provisions of this Act' :—A contract, for instance, with a tenant not being a tenant in sir land or a sub-tenant, against sinking wells, if broken, cannot make the tenant liable to ejectment, for such a contract would be inconsistent with the provisions of sec. 89.

Where there has been a contract between a landholder and a tenant that rent would be payable in certain instalments and on certain specified dates, and that non-payment of any instalment on the date fixed would make the tenant liable to ejectment, the tenant, if he does not pay any instalment as agreed upon, cannot be ejected under this clause, for, such a condition is inconsistent with the provisions of clause (a) of this section. The tenant can, in such a case, be ejected only when a decree for arrears of rent has first been obtained against him and remains unsatisfied at the end of the agricultural year in respect of which the decree has been passed [sec. 57 (a)]. In *Raj Bansi Kuar* v. *Pheku Misra*, (W. N., 1882, p. 191) it was held that reading clause (c) of sec. 93, Act XII of 1881, in conjunction with secs. 34 and 35 of the same Act, it is clear that no suit will be for the ejectment of a tenant by cancelment of his lease for forfieture by non-payment of rent ; but that when a decree for arrears has been obtained, the procedure mentioned in secs. 34 and 35 above

referred to must be followed. This ruling was approved and followed in *Mussammat Mohra* v. *Baldeo Sahai* (S. D. B. R., No. 5 of 1891). But this principle would not apply in the case of leases governed by secs. 111 & 112 of the Transfer of Property Act.

Parties to suits under this clause :—Vide sec. 64.

Limitation, jurisdiction, suit, appeal and review :—See under sec. 57, clause (b).

Court Fee :—See under sec. 57, clause (b).

For the procedure in ejectment on the grounds specified in this clause vide sec. 65.

Clause (d) :—This clause is new.

In a suit for ejectment on the ground specified in this clause the tenant can be ejected from a portion also of his holding (sec. 66).

'Sub-let or otherwise transferred in contravention of the provisions of this Act :—Vide secs. 20, 21, 25 and 26.

A sub-letting or otherwise transferring by the tenant of the whole or any portion of his holding, in contravention of the provisions of this Act is not void *ipso facto* as between the tenant and the sub-tenant or other transferee, and consequently the tenant cannot sue for a declaration that such sub-lease or other transfer is invalid. He will, on the contrary, be bound by it so long as his landholder does not obtain a decree against him under this clause. In *Chhotey Lal* v. *Ajudhia Pershad* (S. D. B. R. No. 5 of 1901) it was held that the contract of usufructuary mortgage of an occupancy holding is, between the parties to it, a perfectly valid contract and the relation between the parties is not that of landlord and tenant. Accordingly the mortgagor, if he desires to resume possession, must proceed by Civil suit : he cannot treat his mortgagee as a sub-tenant-at-will and oust him by notice under sec. 36 of Act XII of 1881.

Proviso :—The Select Committee in their report printed at p. 63 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—

"To clause (d) we have added a proviso to exclude fixed-rate tenants from the application of this clause which is not applicable to them, as their right of transfer and sub-letting is unlimited." Vide sec. 20.

Parties to suits under this clause :—Vide sec. 64.

For the procedure in ejectment on the ground specified in this clause vide sec. 66.

For remedies against illegal sub-leases and other transfers vide sec. 31

Limitation, jurisdiction, suit, appeal, review and revision : —Vide notes on this heading under sec. 31, sub-section (2), at p. 88 *ante*.

Court-fee :—Vide notes on this heading under sec. 31, sub-section (2), at p. 89 ante.

Special grounds of ejectment of non-occupancy tenants

58. A non-occupancy tenant shall be liable to ejectment on one or more of the following grounds, in addition to the grounds specified in the last preceding section, namely,—

(*a*) on the ground that he holds only as a tenant from year to year;

(*b*) on the ground that he holds under a lease the term of which has expired, or will expire, at or before the end of the current agricultural year;

(*c*) on the ground that he has refused to accept a lease containing the particulars of his holding for the time being in accordance with the provisions of section 96 and give a counterpart thereof.

'Shall be liable to ejectment':—i. e. shall be liable to ejectment *from his holding*. The words 'from his holding' in sec. 57 will have to be applied in this section also. A non-occupancy tenant therefore can be ejected under this section from the whole of his holding only, and not from a portion of it. If a holding in respect of which the tenant has not acquired occupancy rights is held at a lump rent along with other holding upon which he has accquired a right of occupancy, a suit for ejectment can be brought against him in respect of the former holding(*Gnput Rai* v. *Bisheshar Rai* S. D. B. R. No. 8 of 1892). A suit for ejectment which does not clearly specify the holding from which the landholder seeks to eject is bad, and cannot he allowed (*Janki Khatic* v *The Maharajah* of *Benares*, 1 L. R. R. R. S., 41).

Who can eject:—See under sec. 57. An agent holding a general power-of-attorney can eject on behalf of his principal (*Jiva Ram* v. *Lachmi Chand*, S. D. B. R., No. 3 of 1885). See also sec. 5 and notes thereunder.

A person who has assigned his village by deed of gift to the Ganges, himself retaining the title of *Sarbaráhkár* or agent of the Ganges, is entitled to issue a notice of ejectment under Sec. 36, Act XVIII of 1873, (corresponding to this section) [*Sah Punni Lal* v. *Bhira*, 3 L. R., R. R. S., 13].

Joinder of claim for ejectment with claim for arrears of rent : —In a suit for ejectment on the grounds mentioned in clauses (*a*) and (*b*) of this section a claim for arrears of rent cannot be joined, for, an appeal against a decree for arrears of rent lies under Sec. 177 to the District Judge, but a decree for ejectment is appealable under sec. 179 to the Commissioner ; and it cannot be that an appeal from the same decree may lie to two different Courts.

Burden of proving nature of tenancy :—The burden of proving that the person against whom a suit for ejectment is brought under this section is not a tenant lies on such person (*Babu Lal Bahadur Lal* v. *Sheo Narain Lal*, 2 L. R., R. R. S., 14). If a tenant claims a right of occupancy, it is for him to prove that right (*Puddo Monee Dossia* v. *Jholla Paily*, 7 W. R., 283 ; *Nubo Coomar Ghose* v. *Oozir Shikdar*, 23 W. R , 238 ; *Girdhar Das* v. *The Mahraja of Benares*, 2 L. R., R R S., 50). A landlord is entitled to eject his tenant unless debarred by certain rights of the tenant. He is not required to prove the absence of the circumstances which entitle that tenant to retain possession (*Nubo Coomar Ghose* v. *Oozir Shikdar*, 23 W. R., 238).

Res Judicata when nature of tenancy determined under this section :—When under this section the Court determines the nature of the tenancy, a suit under Sec. 95 for a declaration of the class to which the tenant belongs will it seems, be barred as *res judicata.*

Limitation, jurisdiction, suit, appeal, review and revision : —No suit for the ejectment of a non-occupancy tenant on the grounds specified in this section shall be instituted except between the thirtieth day of June and the first day of October ; but such a suit may be instituted between the thirtyfirst day of December 1901 and the first day of April 1902 (Sec. 63).

Suits under this section should be filed in the Court of the Assistant Collector in charge of the Sub-division ; provided that if there is no Assistant Collector in charge of the Sub-division, such suits should be filed in the Court of the Collector [Sec. 174 (*b*)]. An appeal will lie to the Commissioner from the decree of an Assistant Collector of the first class or of the Collector [Sec. 179 and Sec. 180 (1)] within sixty days from the date of the decree appealed against (4th Schedule, Group E, serial No. 53). A second appeal will lie, under Sec. 181, to the Board from the decree of the Commissioner within ninety days from the date of the decree appealed against (4th Schedule, Group E, serial No. 54).

As to review vide secs. 183 and 184, and as to revision vide sec. 185.

Court Fee :—The Court-fee will be computed according to the amount of rent payable by the tenant (4th Schedule, Group C, serial No. 29).

Clause (a):—Where there is nothing to show on what tenure a tenant holds from his landlord, the presumption is that he is a yearly tenant (*Goordial* v. *Ramdut*, *Agra*, F. B., 15). If the sub-tenant mentioned in sec. 30 does not vacate the holding when his interest is extinguished with the extinction of the interest of the tenant from whom he holds, he will, under sec. 34, be deemed to be a tenant holding from year to year and will be liable to ejectment under this clause. See notes on Sec. 34. In *Prasanno Coomaree Dabia* v. *Rutton Bepary*, (I. L. R., 3 Calc., 696; 1 C. L. R., 577), it was held that the nature of a holding as between the landlord and tenant, must always be a matter of contract, either expressed or implied. If there is no express agreement, a tenant becomes a tenant-at-will or from year to year.

A tenant holding over after the expiry of the term of his lease is a tenant holding from year to year until he acquires occupancy rights. There is no difference in law between the position of a ryot holding without a *pattá* and that of one holding over, after the expiry of the term covered by a *pattá*, with the consent of the landlord. The relationship does not come to an end after the expiry of each year, without some act on the part of the landlord and tenant jointly, or of either of them (*Chaturi Singh* v. *Makund Lall*, I. L. R., 7 Calc., 710; 9 C. L. R., 240).

The distinct admission of occupancy right and consent to its sale in satisfaction of a decree on the part of a landholder will estop him from issuing a notice of ejectment under sec. 36, Act XII of 1881, against the purchaser of the holding (*Dharajit* v. *Bhajan Lall*, S. D. B. R., No. 14 of 1893).

For 'year-to-year tenancy' see notes on 'Leases held to require registration' and on 'Leases held not to require registration' under sec. 4 (11), at pp. 22 and 23.

Clause (b):—Vide Sec. 67 in connection with this clause. This clause would apply also to sub-tenants whose interest is extinguished under sec. 28.

'Or will expire':—In *Deokinandan* v. *Salig Ram* (S. D. B. R., No. 11 of 1891) it was held that under sec. 36, Act XII of 1881, a landholder may issue a notice for the ejectment of a tenant after the determination of his tenancy before the tenancy has actually determined. In *Rao Karan Singh* v. *Khubee Singh* (1 L. R., R R. S., 159) it was held that if a lessor desire to eject a tenant at the end of the agricultural year in which the lease expires, he can in the last year of the lease serve a notice of ejectment on him under sec. 36, Act XII of 1881, and eject him on the determination of the lease under sec. 40 of that Act.

Onus of proof of determination of tenancy:—The burden of proving that the tenancy has determined lies on the landholder (*Muhammad Masud Hasan Khan* v. *Raghobar*, S. D. B R., No. 13 of 1893).

Procedure.

(A)—In Ejectment for Arrears.

Procedure in ejectment for arrears decreed.

59. When a landholder desires to eject a tenant, on the ground specified in clause (*a*) of section 57, he shall apply in the same manner as for execution of the decree to the Court empowered at the time to execute the same.

The section corresponds to Sec. 35, Act XII. of 1881.

'In the same manner as for execution of the decree':— Vide Secs. 230 to 238 of the Code of Civil Procedure.

'Court empowered at the time to execute the same':—The Court empowered to execute a decree is ordinarily the Court which passed it (Sec. 223 of the Code of Civil Procedure). Section 174 provides that "all application included in Group D of the 4th Schedule (which includes applications for execution of money-decrees) shall, except as provided in Sec. 59, be filed in the Court of the Tahsildar. The words "except as provided in Sec. 59" in section 174 (*a*) show that it is not necessary that all applications for execution of decrees for arrears of rent should be filed in the Court of the Tahsildar. Under section 174 (*a*) suits for arrears of rent in which the amount of the rent claimed does not exceed one hundred rupees should be filed in the Court of the Tahsildar. In such cases an application for ejectment under Sec. 59 should be made to that Court.

Suits for arrears of rent for an amount exceeding one hundred rupees should be filed in the Court of the Assistant Collector in charge of the sub-division, or in the Court of the Collector [Sec. 174 (*b*)]. In such cases an application for ejectment under Sec. 59 should be made to the Assistant Collector in charge of the sub Division or to the Collector, as the case may be, and not to the Court of the Tahsildar.

Limitation, jurisdiction, application for execution and appeal:—An application for the execution of a decree for ejectment under this section should be filed in the Court empowered at the time to execute the decree for arrears of rent within three years from the date of the final decree in the case (4th Schedule, Group D, Serial Nos. 39, 47 and 48). For 'the Court empowered at the time to execute the decree' see preceding note.

If the application has been made to an Assistant Collector of the second class (Tahsildar), an appeal will lie from his order to the Court of the Collector [Sec. 176 (*b*)] within thirty days from the date of the

order appealed against (4th Schedule, Group E, Serial No 52). The decision of the Collector will be final. If, however, the application has been made to an Assistant Collector of the 1st class or to the Collector, his order will be final, except where he has passed an order rejecting the application, in which case an appeal will lie to the Commissioner against such an order (Sec. 179) within sixty days from the date of the order appealed against (4th Schedule, Group E, Serial No. 53). The order of the Commissioner will be final.

Court fee :—The Court fee payable on an application for execution in relation to any suit in which the amount or value of the subject matter is less than fifty rupees, will be one anna ; and in other cases eight annas (Schedule II, Art. 1 of the Court-Fees Act VII of 1870), and on a memorandum of appeal also eight annas (Schedule II, Art. 11 of the Court Fees Act. VII. of 1870).

Notice to issue to tenant.

60. The Court on receiving the application shall cause a notice to be served on the tenant, stating the amount due under the decree for which he is liable to ejectment and requiring him within fifteen days from the service of the notice to pay such amount into Court, or to show cause why he should not be ejected from his holding.

This section corresponds to sec. 35, Act XII of 1881.

Service of notice :—Notice will be served in the manner prescribed in Chapter VI of the Code of Civil Procedure for service of summons. In *Ghirao Pathak* v. *Suresh Dat* (S. D. B. R. No. 17 of 1892) it was held that the mere affixation of a notice to a man's residence during his absence, under circumstances that prevent his contesting the notice within the time entered in it, is not due service. In *Sakina* v. *Gauri Sahai* (I. L. R. 24 All. 302 ; W. N., 1902, p. 68) it was held that where a serving officer finds a defendant to be away temporarily from home, and knows where he is, it is not a good service if he thereupon does no more than affix the summons to the outer door of the house : he must make further efforts to effect personal service. See also sec. 193 (*f*) of this Act.

If there are more tenants than one of any holding in respect of which an application under sec. 59 has been made, each one of them should be served with a separate notice (Sec. 74 of the Code of Civil Procedure).

Substituted service of notice is sufficient when personal notice is impossible (*Gopal Saran Singh* v. *Rituraja Rai*, 1. L. R., R. R. S., 11). When a notice to quit was sent by a registered letter, the posting of

which was proved, and which was produced in Court in cover in which it was despatched, that cover containing the notice with an endorsement upon it purporting to be by an officer of the Post Office, stating the refusal of the addressee to receive the letter, it was held that this was sufficient service of notice (*Jogendro Chander Ghose* v. *Dwarka Nath Karmokar*, I. L. R., 15 Calc., 681).

Strict proof of service of notice is necessary (*Ram Rup Ahir* v. *Sheo Dyal*, 1 L. R., R. R. S., 40).

Burden of proving service of notice :—The burden of proving service of notice lies on the landholder (*Ram Rup Ahir* v. *Sheo Dyal*, 1 L. R., R. R. S., 40).

'Notice' :—The notice must be clearly and explicitly worded (*Janki Khatik* v. *The Maharaja of Benares*, 1 L. R., R. R. S., 41). Notices of enhancement under Act X of 1859 stand on the same footing as notices of ejectment. So the following rulings under Act X of 1859 as to what constitutes sufficient notice are in point.—The object of the notice is that the ryot might know the exact grounds on which ejectment is sought, and if the ryot is aware of such grounds, the notice is not defective because it is not in the exact words of the law (*Radha Bullub Ghose* v. *Beharee Lall Mookerjee*, 12 W. R., 537). A notice is good if, without containing the exact terms of the law, it states with sufficient precision the amount due under the decree and the ground on which the ejectment is sought, so that the ryot served with the notice may not be misled or prejudiced, and can clearly comprehend what he has to meet (*Mc Giveran* v. *Hurkhoo Singh*, 18 W.R ,203 ; *Audh Beharee Singh* v. *Dost Mahomed*, 22 W. R., 185 ; *Sagur Mundul* v. *Mohendro Nath Biswas*, 25 W. R., 28). A notice is not informal because it does not bear the signature of the landlord or his agent, if it is obvious from whom it comes (*Huronath Roy* v. *Nirnomoyee Debi*, W. R., 1864, Act X, 56). The service of a defective notice is tantamount to non-service (*Rajkissen Roy* v. *Prankissen Roy*, W. R., 1864, Act X, 89).

'Amount due under the decree' :—This should not include the costs of the application under sec. 59. If such costs, or any sum over and above the actual amount payable under the decree for arrears of rent is inserted in the notice, the tenant can nevertheless stop proceedings under sec. 61 by paying only the amount due under the decree. In *Harnam Dyal Singh* v. *Gabbu Ahir* (3 L. R., R. R. S., 37) it was held that a tenant against whom a notice has issued is not bound, when depositing the amount of the decree on account of which notice was issued, to deposit costs of ejectment proceedings, which must be recovered in ordinary course.

Rehearing of ex-parte decree for arrears of rent :—As in this Act there is no section corresponding to sec. 128 of Act XII of 1881,

so if a decree for arrears of rent has been passed *ex-parte* against a tenant, he can apply under sec. 108 of the Code of Civil Procedure, within thirty days from the service of notice under this section, to have the case restored for hearing as against him.

Though the Allahabad High Court has ruled in *Janki Prasad* v. *Sukhrani*, (I. L. R., 21 All. 274), that "when a defendant against whom a decree has been passed *ex-parte* for default of appearance dies, his legal representative is not competent to apply under Sec. 108 of the Code of Civil Procedure for an order to set the *ex-parte* decree aside," but this ruling would not bar such an application by the successor of a tenant against whom an *ex-parte* decree is passed, because Sec. 4 (1) of this Act lays down that "all words used to denote the possessor of any right shall be deemed to include the successor in right of such person," but there is no similar provision in the Code of Civil Procedure.

Ejectment if arrears not paid.

61. If the amount is not so paid, or if payment thereof is not certified to the Court in accordance with the provisions of section 258 of the Code of Civil Procedure, within such time, or such further time as the Court may, for reasons to be recorded, think fit to allow, or if the tenant fails to show cause why such order should not be passed, the Court shall order the ejectment of the tenant :

Provided that if the tenant makes a claim on account of improvements, such claim shall be investigated and the Court shall record a finding as to the amount of compensation payable to the tenant on that account ;

if the compensation exceeds the amount recoverable from the tenant as arrears of rent, whether already decreed or not, on account of his holding, together with costs (if any), the order for his ejectment shall be conditional on the payment by the landholder of the balance due to the tenant within such time as the Court may direct ;

if the compensation does not exceed the amount recoverable from the tenant as above specified, the tenant shall be ejected, but he shall be entitled to set off the compensation found to be due to him against any claim for arrears of rent, including costs (if any) made against him by the landholder :

Provided, also, that if such claim is made in the Court of an Assistant Collector of the 2nd class, he shall forward the application for ejectment to the Assistant Collector in charge of the sub-division, or the Collector, for disposal.

This section corresponds to Sec. 35 of Act XII of 1881.

Amount :—*i. e.*, the decretal amount ; it does not include costs of ejectment proceedings. See notes on "Amount due under the decree" under Sec. 60.

Payment of part of decretal amount :– Payment into Court of part of an unsatisfied decree does not entitle a tenant to retain possession of part of his holding (*Salig Ram* v. *Ram Dyal*, S. D. B. R., No. 11 of 1892).

Who can save ejectment by payment :—The mortgagee of a tenant can save ejectment by paying arrears of rent *Jawahir* v. *Ganpatji* 1 L. R., R. R. S. 18), and on the same principle the Sub-tenant can also save ejectment by paying arrears of rent. In *Sarada Prasad Chowdhry* v. *Nobin Chunder Dutt* (Marshall's Reports, 417), it was held that a purchaser of a transferable tenure can also save ejectment by making the payment.

'Such further time as the court may think fit to allow' :—If, while proceedings under this section are in progress, the tenant makes any claim on account of improvements, the Court cannot allow the time necessary for the investigation of such a claim in order that he may pay within such time the amount of arrears of rent decreed against him, or that he may get certified under Sec. 258 of the Code of Civil Procedure the fact of payment of such amount. The time necessary for the investigation of such a claim can not be 'further time' within the meaning of this section, because such time cannot be definite, as also because the question of awarding compensation for improvements will be decided when the further time granted by the Court has expired and the tenant has not paid the amount due under the decree within such further time.

'Improvements':—See Sec. 4 (12) and notes thereunder, p. 25 *ante*. The improvement must be such as the holding from which the tenant is sought to be ejected is benefitted by it, and the tenant was entitled to make it.

As to provision for estimating the valuation of compensation vide sec. 91.

As to provision for estimating the amount of compensation when improvement benefits both the land from which the tenant is to be ejected and other land in the occupation of the same tenant vide Sec. 92.

When a Sub-tenant makes an improvement on his holding with the consent of the proprietor, according to the provisions of sec. 89 (2), and the tenant-in-chief ejects the sub-tenant in execution of a decree for arrears of rent, and the sub-tenant claims and receives compensation from the tenant-in-chief for the improvement made by him, if afterwards the tenant-in-chief is himself ejected from that holding in execution of a decree for arrears of rent, it seems that he can claim compensation for the improvement for which he has paid compensation to the sub-tenant.

Shall be investigated:—*i. e.*, in accordance with the provisions of secs. 88 to 93.

"Whether already decreed or not":—*i.e.*, the total amount of rent due from the tenant at the time the compensation is awarded, in respect of the holding from which the tenant is sought to be ejected, whether that amount has already been decreed or is over and above the decretal amount, being arrears of rent for the period subsequent to that for which a decree has already been passed.

'On account of his holding':—*i.e.*, on account of the holding from which the tenant is sought to be ejected.

'Shall be entitled to set off the Compensation.':—But the tenant will not be entitled to execute like a decree the finding as to the amount of compensation for improvements; he shall be entitled only to *set off* the compensation against any claim for arrears of rent.

Against any claim for arrears of rent:—*i. e.*, against any claim for arrears of rent, whether decreed or not; but the claim must be only in respect of the holding from which the tenant is sought to be ejected.

Last proviso:—Since the application under sec. 59 for the ejectment of a tenant on account of a decree for arrears of rent passed by an Assistant Collector of the 2nd class remaining unsatisfied must be made to that court it has therefore been provided in this proviso that if a claim for improvement is made in the Court of an Assistant Collector of the 2nd class, he shall forward the application of ejectment to the Assistant Collector in charge of the sub-division, or to the

the Collector, for disposal, because an Assistant Colector of the 2nd class has no power to dispose of a claim for improvements (Sec. 171). The Assistant Collector in charge of the sub-division or the Collector to whom the application for ejectment is sent for disposal, seems not to be empowered to grant any further time for payment of the amount decreed, provided no prayer for further time has been made by the tenant in the original Court, or, if made, it has been disposed of by that Court. The Court to which the application for ejectment is sent for disposal under this proviso seems to be empowered to deal with such application in so far only as the claim for compensation and subsequent proceedings in ejectment are concerned. The power of allowing further time seems to be limited to the Court to which the application for ejectment is made.

Liability to pay rent after order for ejectment :—After an order for ejectment is passed and before the landholder gets possession of the holding in execution of such order, the tenant will be liable to pay rent if he remains in occupation of the holding.

Ex-parte proceedings :—Where an order for ejectment has been passed under this section, it seems doubtful in view of the ruling in *Dhonkal Singh* v. *Phakkar Singh*, (I. L. R., 15 All. 54), whether the tenant can, within the period allowed by law, apply to have restored to file the application under Section 59 which has been decided *ex-parte* against him, if the notice mentioned in Sec. 60 has not been duly served upon him, and whether he can apply for setting aside the decree passed *ex-parte* against him in execution whereof the application under Sec. 59 was made, if the notice mentioned in Sec. 60 has not been duly served upon him. In *Dhonkal Singh* v. *Phakkar Singh* above mentioned it was laid down that Sec. 108 of the Code of Civil Procedure does not apply to execution proceedings. But in *Mussammat Ranchor Kuar* v. *Mundri Singh* (S. D. B. R., No. 2 of 1899) it was held that a Court which has ordered the ejectment of a tenant, under Sec. 35, Act XII. of 1881, *ex-parte* has power, under Sec. 128 (b) of Act XII of 1881 (corresponding to Sec. 108 of the Code of Civil Procedure), on due cause being shown by the tenant to revise the proceedings.

When an *exparte* decree is set aside by admitting a rehearing, all processes issued in execution under the decree are also set aside (*Jagat Narain* v. *Tulshi Ram.*, 1 B. L. R., 71 ; *Jubraj Singh* v. *Buhooria*, 7 C. L. R., 424).

Where, on the application of the defendant, a suit, decided *ex-parte*, is revived but under Sec. 128 Act, XVIII of 1873, (corresponding to Sec. 108 of the Code of Civil Procedure) on account of the failure of the parties to appear it is not reheard, it was held that the original *ex-parte* decree remains in force and can be executed (*Amin Singh* v. *Dabi Singh* 2. L. R., R. R. S., 67).

Appeal and limitation :—From an order allowing further time under this section an appeal will lie to the Commissioner (Sec. 179) within sixty days from the date of the order appealed against (4th Schedule, Group E, Serial No. 53). The Commissioner's order thereon will be final. An order disallowing further time will be final, except when it has been made by an Assistant Collector of the 2nd class, in which case it will be appealable to the Collector (Sec. 176).

Court Fee :—The Court fee payable on a memorandum of appeal will be eight annas (Act VII of 1870, Schedule II, Serial No 11).

Sections 71 to 78 applicable to such proceedings.

62. The provisions of sections 71 to 78 shall be, so far as may be, applicable to all proceedings under section 59.

(B)—In Ejectment on other grounds.

Suits for ejectment when to be filed.

63. (1) When a landholder desires to eject a tenant on any other ground than that specified in clause (*a*) of section 57, he shall proceed by suit ; but no suit for the ejectment of a non-occupancy tenant on the grounds specified in section 58 shall be instituted except between the thirtieth day of June and the first day of October.

(2) Notwithstanding anything in sub-section (1), any suit for ejectment may be instituted between the thirty-first day of December 1901 and the first day of April 1902.

This section corresponds to Sec. 38 of Act XII of 1881.

The Select Committee in their report printed at page 64 of the N.-W. P. & O. Gazette, dated 22nd June, 1901, say :—"The institution of suits for the ejectment of tenants on the grounds specified in clauses (*b*), (*c*) and (*d*) of Sec 56 (now Sec. 57) cannot be limited to the dates mentioned in this Section : to do so might have the effect of circumscribing the limitation allowed for such suits : nor is it necessary, as a matter of convenience, that such suits should be brought in the months of July, August and September. The case of suits for the ejectment of non-occupancy tenants under Sec. 57 (now Sec. 58) is different. It is very desirable that early notice should be given to the tenant of the landholder's intention to eject him, and that suits should be instituted in time

to enable the Courts to make enquiry into them in the cold weather, and to decide them before the end of the agricultural year."

'Between the thirtieth day of June and the first day of October': *i. e.*' in the months of July, August and September. (Vide Report of the Select Committee given above).

'Between the thirty first day of December 1901 and the 1st day of April 1902':—*i. e.*, in the months of January, February and March, 1902. But, under the corresponding section 38 of Act XII of 1881 which provided that application for the issue of a notice of ejectment should be made " between the first day of January and the 1st day of April in each year," it was held by the Board in *Sahu Puran Parshad* v. *Jairaj and Tika* (S. D. B. R., No. 8 of 1891) that the application for the issue of a notice of ejectment under Sec. 36, Act XII of 1881), if made on the 1st April, is in time with reference to the provisions of Sec. 38 of that Act. But with due respect to the Board, the above ruling does not seem to be correct, for the word used is "between" such and such dates, which properly interpreted would exclude from reckoning the first and the last dates. Had the words used been "from" such date "to" such date, the case would have been different.

Sub-lessees and other transferees when to be made defendants.

64. (1) In a suit for ejectment—

(*a*) where the ejectment of the tenant is sued for on the ground of any act or omission, or breach of condition, by a sub-lessee or other transferee involving the ejectment of the tenant; or

(*b*) where the ejectment of the tenant is sued for on the ground specified in clause (*d*) of section 57,

the sub-lessee or other transferee must be joined as a party to the suit.

(2) In all other suits for ejectment any person in possession claiming through the tenant may be joined as a party to the suit.

This section corresponds to Sec. 210 of Act XII of 1881

Sub-section (1):—

Clause (a) :—Vide Sec. 57, clauses (*b*) and (*c*) and notes thereunder.

Clause (b) :—

'**Sub-lessee**' :—It may be noted that the word used is not "Sub-tenant" but "Sub-lessee," which shows that the Legislature intended to distinguish "Sub-tenant" from "Sub-lessee." A "Sub-tenant," as defined by this Act, means a tenant who holds land from a person possessing therein *only the interest of a tenant*, other than a permanent tenure holder or a thekadar. So in relation to a certain land-holder, a sub-tenant is only that person who holds from the tenant of the landholder; a tenant of the sub-tenant would not be a sub-tenant of the landholder for he does not hold from a tenant but from a sub-tenant. Sub-tenant is, therefore, a person between whom and the landholder a tenant alone intervenes. But it seems that the Legislature in this section did not intend that only the tenant and the person holding from the tenant should be made parties, but that all "sub-lessees" should be made parties. The word "sub-lessee" therefore, would seem to include all tenants who hold land by means of a sub-lease, whether from a tenant, or from a sub-tenant, or from a lessee of a sub-tenant. Had the word used been "sub-tenant" great difficulty would have arisen in view of the provisions of sec. 71, for if only the sub-tenant is made a party, and a third person to whom the sub-tenant has sub-let his holding and who is in occupation of it is not made a party, then under sec. 71 (2) such person, not being bound by the decree or order for ejectment, would be entitled to oppose the delivery of possession to the landholder, and ejectment could not be enforced as against him. The word "sub-lessee" has therefore been advisedly used so as to include the sub-tenant, the person holding from the sub-tenant by means of a sub-lease, and so on downwards as far as sub-letting goes on.

Sub-section (2) :—The words used in this sub-section are "any person in possession claiming *through the* tenant" which limits the joinder of the parties to one degree only, viz., to the sub-tenant or other transferee of the tenant. In suits for ejectment other than those mentioned in sub-section (1) to this section, it is not necessary that any person other than the tenant be made a party, but if the circumstances of the case so require, the landholder may go one degree further and join as a party the sub-tenant or other transferee from the tenant.

Procedure in ejectment for forfeiture.

65. (1) When a tenant is found liable to ejectment on the grounds specified in clause (*b*) or clause (*c*) of section 57, the Court shall give a decree for the ejectment of the tenant, but may in its decree direct that if the tenant

repairs the damage, or pays such compensation as the Court thinks fit within one month from the date of the decree, or such further time as the Court may, for reasons to be recorded, allow, the decree shall not be executed except in respect of costs.

(2) Notwithstanding anything contained in this section, a landholder may sue for compensation in addition to, or in lieu of, suing for ejectment: or for an injunction, or for the repair of the damage or waste, with or without compensation.

This section corresponds to sec. 149 of Act XII of 1881.

Subsection (1) :—

'In its decree' :—The grace given to a tenant under this sub-section must be given when the decree is made and not afterwards (Teyne's Rent Law Manual, Decision of the Board of Revenue, unreported, file No. 270 of 1882.)

Wilful breach of condition or wilful injury :—Relief under this sub-section cannot be given when the tenant has wilfully broken any of the stipulations of his covenant or wilfully injured any of the lessor's property (*Dulli Chand* v. *Sher Chand Sahao*, 8 W. R., 138.)

Liability to pay rent for occupation after decree for ejectment and before delivery of possession :—If after the decree for ejectment and before the delivery of possession under sec. 71 the tenant remains in occupation of the holding, he shall be liable to pay rent.

Claim on account of improvements :—Ejectment of a tenant cannot be ordered until any claim made by him on account of improvements has been investigated and the court has recorded a finding as to the amount of compensation (if any) payable to the tenant on that account (sec. 70).

Application, jurisdiction, limitation and appeal :—Applications for execution of a decree for ejectment passed under this subsection should be filed in the Court of the Tahsildar [sec. 174 (*a*)] within one year from the date of the final decree in the case (4th Schedule, Group D, Serial No. 49). The Tahsildar has power to dispose of such applications (Sec. 171).

An appeal will lie to the Collector from an order of the Tahsildar on such applications [sec. 176, clause (*b*) or (*c*) within thirty days from the date of the order appealed against (4th Schedule Group E. Serial No. 52). The order of the Collector in appeal will be final.

Court Fee :—Vide under sec. 59.

Sub-section (2):—Suits under this sub-section may be resolved under the following heads, and the procedure governing them is given with each of them :—

(1) A suit for ejectment only, in which the procedure mentioned in sec. 65 (1) will be followed.

(2) A suit for conmpensation only, in which the landholder will be entitled only to a decree for compensation and the tenant will not be ejected in execution of such decree. The procedure mentioned in secs. 254 and 256 of the Code of Civil Procedure will be followed. The landholder may include in the compensation claimed such costs as he is likely to incur in restoring the land to its original condition.

(3) A suit both for ejectment and for compensation, in which the procedures mentioned in paragraphs (1) and (2) noted above will apply.

(4) A suit for injunction only, in which the decree shall be executed according to the provisions of sec. 260 of the Code of Civil Procedure

(5) A suit for an injunction with compensation in which the decree for injunction will be executed according to sec. 260 of the Code of Civil Procedure, and that for compensation according to sec. 254 of the Code of Civil Procedure.

(6) A suit for the repairing of the damage or waste only in which the decree will be executed under sec. 260 of the Code of Civil Procedure.

(7) A suit for the repair of the damage or waste and for compensation in which the decree for repair of damage or waste will be executed under sec. 260 of the Code of Civil Procedure and that for compensation under sec. 254 of the same Code.

In the suits mentioned above when the claim is for compensation only, then alone can the procedure of sec. 256 of the Code of Civil Procedure. be followed, as that section is applicable only when the decree is a decree for money only. But when in a suit compensation is prayed for in addition to any other relief, the procedure mentioned in sec. 256 of the Code of Civil Procedure cannot be followed, as in such a case there would be a decree both for compensation and for other relief claimed.

Limitation, Jurisdiction, suit, appeal and review :—Suits under this sub-section for an injunction or for the repair of the damage or for compensation should be filed in the court of the Assistant collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (*b*)] within one year from the time when the damage is done, or the waste begins, or the condition is broken (4th Schedule, Group B, Serial No. 14). And such suits will be disposed

of by an Assistant Collector of the 1st Class (sec. 172) or by the Collector (sec. 173).

An appeal will lie to the District Judge from the decree of an Assistant Collector of the 1st Class or from that of the Collector (Sec. 180) within thirty days from the date of the decree appealed against (Indian Limitation Act, second schedule, Art. 152). if the amount or value of the subject matter exceeds one hundred rupees; provided that when the amount or value of the subject matter exceeds five thousand rupees, the appeal will lie to the High Court (Sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act, 2nd Schedule, 2nd division, Serial No. 156). A second appeal will lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of Chapter XLII. of the Code of Civil Procedure.

As to review vide sec. 184.

Court Fee :—In a suit for compensation, the Court fee will be computed according to the amount claimed [The Court Fees Act, Sec. 7 (i)].

In a suit for an injunction, the court-fee will be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal [The Court Fees Act, Sec. 7, sub-Sec. IV, Clause (*d*)].

Procedure in ejectment for illegal sub-lease or other transfer.

66. (1) When a tenant is found liable to ejectment on the ground specified in clause (*d*) of section 57, the Court shall give a decree for the ejectment of both the tenant and the sub-lessee or other transferee, either from the holding or from such portion thereof as the Court, having regard to all the circumstances of the case, may direct. If the tenant is not a sub-tenant, the Court may in its decree direct that the decree may be executed as against the sub-lessee or other transferee on the application of the tenant alone, and that if the tenant so ejects the sub-lessee or other transferee and resumes occupation of the land from which the sub-lessee or other transferee has been ejected within such time and on such terms as the Court may think fit, the decree shall not be executed as against the tenant except in respect of costs.

(2) If the tenant is ejected, in execution of the decree, from a portion only of his holding, the Court shall determine the rent payable for the remainder of the holding, after allowing a suitable reduction for the portion of the holding from which the tenant has been ejected.

This section is altogether new.

Meaning of the section :—This section gives the tenant, who has made an illegal sub-lease or other transfer, and on account of which he is found liable to be ejected, an option to eject his sub-lessee or other transferee and himself remain in occupation of the holding. The wordings of the section appear to show that it is not compulsory for the tenant to claim this benefit by application. Even if he does not claim it in the court of first instance he can do so in the court of appeal.

Sub-section (1) :—

'Tenant' :—Vide section 4 (5) and notes thereunder, p. 16 *ante*.

'Sub-lessee' :—See notes under section 64 (1).

'Sub-tenant' :—Vide section 4 (7) and notes thereunder, p. 20 *ante*.

'If the tenant is not a sub-tenant' :—i. e., if the tenant is the tenant-in-chief. The privilege allowed by the latter portion of this sub-section can be claimed only by the tenant-in-chief. The select committee in their report printed at page 64 of the N.—W. P. and O. Gazette, dated 22nd June, 1901, say :—" It was necessary to provide for cases in which a sub-lessee is in possession and to assist the tenant-in-chief who desires to resume occupation to eject the sub-lessee." In the Bill also as originally drafted, printed at page 37 of the N. W. P. and O. Gazette, dated 17th November, 1900, this section ran as follows :—"Whenever a decree is passed for the ejectment of a tenant, not being a sub-tenant to a tenant &c. &c."

'On such terms' :—These terms refer to terms between the land-holder suing for ejectment and the tenant who applies for the execution of the decree.

'Except in respect of costs' :—The decree being joint as against the tenant and the sub-lessee or other transferee both being wrong-doers, it appears that the decree for costs may be executed either against the tenant, or against the sub-lessee or other transferee, or against both. The concluding words of this sub-section do not seem to prohibit the execution, as against the sub lessee or other transferee, of the decree for costs. But wording of the section is not very clear on on this point.

Claim for improvement :—Vide section 70.

Limitation, jurisdiction, application for execution and appeal :—An application for execution of a decree for ejectment under this sub-section should be filed in the Court of the Tahsildar [sec. 174 (*a*)] within one year from the date of the final decree in the case (4th Schedule, Group D, Serial No. 49). An Assistant Collector of the second class will dispose of such applications (sec. 171). An appeal will lie to the Collector from the order of an Assistant Collector of the second class on such applications [sec. 176 (*b*).] The order of the Collector will be final.

Court-fee :—The Court-fee payable on an application for execution is eight annas (Schedule II, Art. 1 of the Court Fees Act VII of 1870), and the same on a memorandum of appeal (Schedule II, Art. 11 of the Court Fee Act VII of 1870.)

Sub-section (2) :—If the Court omits to determine the rent payable in respect of the remainder of the holding, the tenant's right to have the rent thereof determined under sec. 95 will not be barred.

Procedure in suit for ejectment of tenant holding under registered lease for not less than seven years.

67. When a landholder sues under section 58 for the ejectment of a tenant holding under a registered lease for a term of not less than seven years, or holding over after the expiry of the term of such a lease,

if the tenant pleads that the ejectment is, in fact, sued for because he has refused to agree to an enhancement of his rent, and such issue is decided in his favour,

the Court shall proceed to inquire whether, having regard to the rents paid by non-occupancy tenants for land of similar quality and with similar advantages in the neighbourhood, an enhancement of the rent can be fairly and equitably claimed, or not.

(2) If the Court finds that an enhancement can be fairly and equitably claimed, it shall determine the amount of such enhancement, and in such case shall pass a decree for the ejectment of the tenant,

but shall direct in its decree that if the tenant, within fifteen days from the date thereof, certifies to the Court that he agrees to pay the enhancement so determined, the decree shall not be executed except in respect of costs.

(3) If the Court finds that an enhancement cannot be fairly and equitably claimed, it shall dismiss the suit for ejectment.

This section is altogether new. The Select Committee in their report, printed at pages 66 to 68 of the N. W. P. and O. Gazette, dated 22nd June, 1901, say :—"The case of the latter class (i. e., tenants who hold on leases of seven years or longer) is altogether different. By the provisions of sec. 11 they are excluded from the acquisition of a right of occupancy, however long they may continue to cultivate, and however fully they may discharge their obligations as tenants. They will be thus prevented by the direct action of the law from obtaining the privileges which, it might well be argued they should have earned, as deserving tenants, by continuous cultivation. It may be, therefore, fairly urged that it is incumbent on the Legislature, when it places a check on their advancement in this respect, to secure to them fair and equitable treatment in regard to their rents. To leave these rents entirely within the control of the landholders would have the effect of adding to their disabilities in respect of the acquisition of a right of occupancy, a liability to the payment of severe and excessive rents, and in some cases to uncontrolled-rack —renting.

"There is another consideration that is of importance. As far as we can see, the tendency in future will be to check any increase in the area occupied by occupancy tenants by the grant of seven years' leases. There can be no doubt that landholders have generally been extremely averse to the creation of occupancy rights. In future they will be still more alive to what most of them believe to be their own interests in this respect. There have been within the last twelve months indications of a general intention on their part to make use of the seven years' lease as the only weapon left to them to defeat the tenant's endeavours to acquire a right of occupancy. If these anticipations are fulfilled to any important extent, the area held by occupancy tenants, must, in the natural course of events, gradually diminish. Ejectments for failure to pay rent, abandonment of their holdings by occupancy tenants, and the deaths of such tenants without heirs to succeed them—all these cases and probably others will con-

tribute to the gradual but certain contraction of the occupancy area. Most of it will probably fall into the hands of seven years' lease—holders. Unless, then, some steps are taken to protect this class of tenants, there will, in the course of time, be no legal protection to the majority of the tenants in respect of their rent, and the only privilege that will remain will be fixity of tenure for seven years.

We find ourselves led by these various considerations to the conclusion that, while it is unnecessary to apply provisions of the nature of those contained in section 68 of the original Bill to the whole body of non-occupancy tenants, it is very desirable to secure the tenants under seven years' leases some protection from excesive rents, and to empower the Courts to interfere when their landholders seek to make use of their power of ejectment as a means of exacting such rents from them.

We have, therefore, redrafted sections 67 to 70 as they now stand in the amended Bill. When a landholder seeks to eject a tenant whose seven years' lease is about to expire, or who is holding on as a year to year tenant after the expiry of such a lease, if his ejectment is, in fact, sought because he refuses to pay an enhanced rent, the Courts will have power to interfere and determine a fair and equitable rent. If the tenant agrees to pay it, he will be entitled to hold on for seven years, or longer if his landholder agrees as if he held a registered lease for that period, that is, his occupation will not count towards the acquisition of a right of occupancy. If it is found that the tenant is already paying a rent which is not less than a fair and equitable rent, he will be similarly entitled to hold on at the rent hitherto payable for the same term of seven years.

To remove the objections that have been urged against the somewhat vague language of section 68 in the original Bill we have redrafted it so as to show that it is only when the tenant has himself pleaded that the ejectment is sued for because he refused to agree to an enhancement and the Court is satisfied that such was, in fact, the case, that the Court shall have power to enquire into the rent to be paid by the tenant."

To whom this section applies:—This section does not apply to sub-tenants, because a sub-lease cannot be given for more than five years (sec. 25). If, however, in contravention of the provisions of this Act, a sub-lease is given for seven or more years, and the landholder of the sub-lessor has not got it set aside, even then this section will not apply to such sub-tenants. The Select Committee in their report printed at page 66 of the N. W. Paud O. Gazette dated 22nd June, 1901, say:—

"We therefore think that section 68 (now section 67 of this Act) was rightly drafted in the Bill so as to exclude sub-tenants from its provisions."

Sub-section (1).

'For the ejectment of a tenant holding over after the expiry of the term of such a lease' :—*i.e.*, under clause (*a*) of section 58, because a tenant holding over after the expiry of the term of a lease is a tenant holding from year to year [vide notes under sec. 58 (*a*)].

'Holding over':—In order to entitle a tenant to the benifits of this section he must prove that he has been holding over after the expiry of the term of a registered lease for a term of not less than seven years. Any break in his holding after the expiry of the term of such a lease would deprive him of his rights under this section. The words 'holding over' show that the holding of the land after the expiry of the term of the lease must be in continuation of the holding under the lease at the time the suit for ejectment is brought.

Onus of proof:—The burden of proving that ejectment is sued for because the tenant has refused to agree to enhancement of his rent lies on the tenant. In *Nobo Coomar Ghose* v. *Ozir Shikdar* (23 W. R., 238) it was held that in a suit for ejectment by a landlord against his tenant, the onus is on the tenant to show any ground for retaining possession.

'Land of similar quality:—see under section 42 (*a*). p. 112.

'Similar advantages':—see under sec. 42 (*a*) p. 112.

'In the neighbourhood';—see under sec. 42 (*a*). p. 112.

'Can be fairly and equitably claimed':—A plaintiff who claims enhanced rent is bound to prove that the present rent is not fair and equitable (*James Hills* v. *Jendar Mundul*, I. W. R., 3), and it lies upon him to make out the ground on which he rests his right to enhance (*Golam Ali* v. *Gopal Lal Thakoor*, 9 W. R., 65).

Claim fer improvements:—vide sec. 70.

68. When, under the provisions of section 67 an enhancement of rent has been determined and has been agreed to by the tenant, or a suit for ejectment has been dismissed, the tenant shall be entitled to retain his holding at the rent so enchanced, or at the rent hitherto payable, as the case may be, for a period of seven years from the first day of July next following the date of the institution of the suit, or for such longer period as the parties may agree upon, and for the purposes of sec-

Effect of decree in such suit.

tion 11 the tenant shall be deemed to be holding under a registered lease for such period.

This section is altogether new.

Procedure in ejectment for non-acceptance of lease and delivery of counterpart.

69. When a tenant is found liable to ejectment on the ground specified in clause (*c*) of section 58, the Court shall give a decree for the ejectment of the tenant, but shall in its decree direct that if the tenant receives the lease and delivers the counterpart within fifteen days from the date of the decree, or such further time as the Court may allow, the decree shall not be executed, except in respect of costs.

This section is altogether new.

Lease:—vide under section 96.

Counterpart:—vide under section 96.

Claim for improvements to be disposed of before ejectment.

70. (1) Notwishstanding any thing hereinbefore contained, the ejectment of a tenant shall not be decreed in any suit, until any claim made by him on account of improvements has been investigated and the Court has recorded a finding as to the amount of compensation (if any) payable to the tenant on that account.

(2) If the compensation exceeds the amount that is recoverable from the tenant by the landholder on account of arrears of rent, together with costs (if any), the decree for ejectment shall be conditional on the payment of the balance due to the tenant within such time as the Court may direct.

(3) If the compensation does not exceed the amount recoverable from the tenant as above specified, the tenant shall be ejected, but shall be entitled to set off the compensation found to be due to him

against any claim for arrears of rent, including costs (if any), made against him by the landholder.

This section is altogether new.

In connection with this section vide sections 88 to 93.

Sub-section (1).

'Improvements':—see under section 61.

'Investigated':—i.e., in accordance with the provisions of sections 88 to 93.

Claim made by him—A tenant may claim compensation on account of improvements for the first time in the appellate Court—(*Makund Prasad* v. *Debi*; S. D. B. R., No. 7 of 1893).

Sub-section (2).

On account of arrears of rent:—On a comparison of the provisions of this sub-section and those contained in paragraph 3 of section 61, it will appear that they are very much similar, the only difference being that in the latter occur the words "whether decreed or not" and "on account of his holding" which have been omitted in the sub-section under note. As to the words "whether decreed or not" it is to be noted that they were neccesasry for the purposes of that section, for the procedure given in that section is a procedure in ejectment in execution of a decree for arrears of rent remaining unsatisfied, and if the words "whether decreed or not" had not been used in that section the mere use of the words "arrears of rent" would naturally have referred to the arrears of rent which had been decreed. But in the present sub-section there is no need to use those words for the procedure given in this section is not one in ejectment in execution of a decree for arrears of rent.

The omission of the words "on account of his holding" in the sub-section under note is also intentional, the reason being that the present sub-section provides for general cases of ejectment on any of the grounds specified in section 57 and 58 and therefore in these cases the arrears of rent whether they be in respect of one holding or many will be taken into account; consequently it was not neccessary to put in the words on account of his holding but in sec 61 these words were neceessary because there the procedure is one of ejectment on account of a decree for arrears of rent remaining unsatisfied in respect of a particular holding.

Improvement benefiting also land from which the tenant is not ejected:—When the improvement benefits both the land from which a tenant is to be ejected and other land in the occupation of the same tenant, the compensation payable to the tenant will be estimated

with reference to the extent to which the land from which the tenant is to be ejected has benefited by such improvement [Sec. 92 (1).]

Limitation :—In the case of a conditional decree under this sub-section, if the balance has been paid to the tenant within the time fixed by the Court, the decree will be executed within one year from the date when the period fixed by the Court expires, because it is only after the expiry of such period that the conditional decree becomes a final decree (4th Schedule, Group D, Serial No. 49) In *Musammat Phulmati* v. *Ishri* (S. D. B. R. No. 13 of 1883) the first Court directed that the tenant should be ejected when the landlord paid the compensation. *Held*, that the provisions of section 40 of Act XII of 1881 may be applied within fifteen days from the date of payment of the compensation so ordered.

Sub-section (3).

'Shall be entitled to set off the compensation' :—Vide under section 61.

Enforcement of Ejectment.

71 (1) Every decree or order for ejectment shall be executed by delivery of possession of the land to the landholder, and no person claiming through the tenant shall be entitled to remain in occupation of the land, unless such occupation be not inconsistent with the provisions of this Act.

Possession to be delivered.

(2) If opposition be made to the delivery of possession, by any person bound by the decree or order for ejectment, the District Magistrate or the Sub-Divisional Magistrate shall, on the application of the Court, enforce the same.

This section corresponds to section 153 of Act XII of 1881.

Sub-section (1).

Delivery of possession:—As to how possession will be delivered to the landholder vide section 263 of the Code of Civil Procedure.

When formal possession of immoveable property has been delivered according to law to a person holding a decree for delivery of the same, the subsequent continuance in actual possession of the judgment-debtor does not give the decree-holder a right to a fresh order for delivery of possession in execution of the decree, but gives him a right to institute a

fresh suit for possession of such property (*Gopal Das* v. *Than singh*, I. L. R., 4 All., 184; W. N., 1882, p. 4.) But such a suit will have to be filed not in a Court of Revenue but in Civil Court, the relation between the decree-holder and the judgment-debtor, after delivery of possession, being not of landholder and tenant.

If the sub-tenant mentioned in section 28 is in occupation of the land of which delivery of possession is to be made, the procedure mentioned in section 264 of the Code of Civil Procedure will be followed.

In a case of ejectment where no action was taken under section 40 of Act XII of 1881 before this Act came into force, it was held that the tenant could not be ejected upon an application under section 71 of this Act, and that the landholder must proceed by suit under this Act (*Nawab Muhammad Ibrahim Ali Khan* v. *Bhagwana*, S. D. B. R., No. 3 of 1902).

Execution by one of several joint decree-holders :—Though under section 231 of the Code of Civil Procedure any one or more of the persons in favor of whom a decree has been passed jointly, can apply for the execution of the whole decree, yet, having regard to the provisions of section 194 of this Act, it is clear that when a decree has been passed jointly in favor of more than one person, it can be executed only when all of them join in doing so. Section 193 of this Act makes the provisions of the Code of Civil Procedure applicable to the procedure in all suits and other proceedings under this Act in so far only as the former are not inconsistent with the latter. As, therefore, the provisions of section 231 of the Code of Civil Procedure are inconsistent with the provisions of section 194 of this Act, the provisions of the former section would not apply under this Act.

Sub-section (2).

This sub-section does not prevent the decree-holder from proceeding under sections 328 to 330 of the Code of Civil Procedure.

If opposition be made to the delivery of possession by a person not bound by the decree or order for ejectment claiming in good faith to be in possession of the property, the procedure mentioned in section 331 of the Code of Civil Procedure will be followed.

If opposition be made by any person not bound by the decree or order for ejectment, and such person is dispossessed, he may avail himself of the provisions of section 332 of the Code of Civil Procedure.

The Select Committee in their report, printed at page 68 of the N.-W. P. and O. Gazette dated 22nd June 1901 say :—"In sub section (2) we have made it clear that it is only in the case of opposition to the delivery of possession when made by any person bound by the ejectment

proceedings that the Criminal Courts shall interfere. Opposition by a person who was not a party to those proceedings would not warrant such interference."

Decree when not to be executed.

72. If the landholder expressly authorizes the tenant in writing to remain in occupation of the land, the decree shall not be executed; and any officer deputed to eject the tenant shall return his warrant unexecuted, together with such authorization, to the Court which issued the warrant.

This section corresponds to section 41 of Act XII of 1881.

The Select Committee in their report, printed at page 68 of the N.-W. P. and O. Gazette, dated 22nd June, 1901 say :—"We have expressly provided that the written authorization purporting to have been given by the land-holder shall be attached to the warrant when it is returned as unexecuted, so that the land-holder may be enabled to establish his objection to it, if he repudiates it." If, therefore, the land-holder repudiates the authorisation and the Court decides in his favour, he may again apply for delivery of possession, and if this second application be made after the expiry of one year from the date of the decree, it will be within time, as this application is not a separate application, but merely in continuation of the application made within time (*Lala Janki Prasad* v. *Baladin*, S. D. B. R., No. 14 of 1891).

Application of section—Breach in continuity of tenure :— When proceedings in ejectment have been taken, but not completed, under section 40 of Act XII of 1881, and the landholder authorises the tenant to remain in occupation of the land under section 41 of Act XII of 1881, there is no breach in the continuity of his tenure. But when ejectment proceedings under section 40 of Act XII of 1881 have been completed, section 41 of that Act does not apply, and there is a breach in the continuity of the tenancy (*Lachman* v. *Lala Maror Singh*, S. D. B. R., No. 10 of 1891, overruling *Narsingh Prasad* v. *Ramanand*, S. D. B. R, No 11 of 1885; *Zalim Singh* v. *Ganga Prasad*, 2 L. R., R. R. S., 13). See also *Salig Ram* v. *Hajimohammad Karim Ullah Khan* (S. D. B. R., No. 9 of 1893).

'In writing' :— These words were not in section 41 of the old Act. If after a decree for ejectment has been passed against a tenant, the land-holder accepts from the tenant rent for the next year, it would not amount to authorization within the meaning of this section, because it is

not *in writing*. Nor is a land-holder estopped from his right of ejectment for arrears of a previous year by accepting rent for a subsequent year (*Munna* v. *Chint*, 1 L. R., R. R. S., 10).

Land-holder and tenant :—*Vide* Section 4 (5) and notes thereunder, p.p., 16 to 19 *ante*.

If a tenant is executing a decree for ejectment against a sub-tenant, the sub-tenant can save his ejectment by producing written authorization of the tenant (his land-holder).

If, however, the tenant acknowledges the authorization to be genuine, but contends that such authorization is not valid, because under section 25 he cannot again sub-let immediately after the expiry of the former sub-lease, this contention cannot prevail, as such sub-letting is not void *ipso facto*, but it is voidable only at the option of the land-holder of the sub-lessor (Sec. 31). Besides, under this section, the Court will have to look merely to the fact as to whether the authorization was made by the land-holder, and not as to whether the land-holder had power to make such authorization.

Appeal, limitation and revision :—The order of an Assistant Collector of the second class as to whether the authorization was made by the land-holder will be appealable to the Collector [sec. 176 (*c*)] within thirty days from the date of the order appealed against (4th Schedule Group E, Serial No. 52). The order of the Callector will be final. If, however, an Assistant Callector of the first class has decided the question whether the authorization was made by the landholder, his order will be final.

Court fee :—The Court fee payable on the memorandum of appeal will be eight annas [The Court Fees Act VII of 1870, schedule II, Art. 11 (*a*)].

Ejectment from when to have effect.

73. (1) Every ejectment in execution of a decree for ejectment shall take effect from the first day of July next following the date of the institution of the suit :

Provided that if the decree is not passed before such first day of July, the ejectment shall take effect from the date on which the decree is executed.

(2) Every ejectment in execution of an order under section 61 shall take effect from the date on which the order is executed.

This section corresponds to section 40 of Act XII of 1881.

Sub-section (1).

'Shall take effect' :—This does not mean that before the first day of July mentioned in this sub-section, the decree for ejectment will not be executed, or that formal delivery of possession will not be given. It means simply that the tenant will not be deprived of possession of the land before that date, and that he will be entitled to exercise all the rights mentioned in section 74 till that date.

'The date on which the decree is executed' :—*i.e.*, the date of delivery of possession under section 71.

Sub-section (2) :—

'The date on which the order is executed' :—*i.e.*, the date of delivery of possession under section 71.

Tenant's right to use holding.

74. Until the ejectment takes effect the tenant shall have the right to use the land for the purpose of growing, tending, gathering, and removing crops or other products of the earth, but he shall not be entitled, in the absence of a contract or local custom to the contrary, to cut or remove any trees upon his holding.

This section corresponds to section 42 (*a*) of Act XII of 1881.

'Until the ejectment takes effect':—Vide section 73.

'Growing' :—Not sowing. If after the decree or order for ejectment has been passed and before the ejectment takes effect, the tenant sows crops on the land from which he has been ejected, he cannot claim the benefits of sections 74, 75 and 76, because "the tenant has had ample warning, and if he commences a fresh year's cultivation, it is not unreasonable that he should do so at his own risk (Report of the Select Committee, printed at page 69 of the N. W. P. and O. Gazette, dated 22nd. June, 1901).

'Crops' :—The word crops includes rose and jasmine plants as well as the flowers they bear, and a tenant is entitled to have the price of such plants estimated with reference to their age, condition and prospective flower-producing capability (*Abdul Baki* v. *Muthra Parshad*, S. D. B. R., No. 22 of 1892). A zamindar cannot lay claim to the crops on the ground at the ryot's death, even supposing that the occupancy right lapsed in his favour, as it forms a part of the property

belonging to the deceased, and passes to his legal representatives (*Doorga Pershad* v. *Doochur Pershad*, 3 Agra, 188). If the tenant obtains a decree for possession from an Appellate Court, he is entitled to recover possession of the land just as it is, with any standing crops that may have been put in by a new tenant. The tenant *ad-interim* must sue for his remedy in the civil court (*Mustan Shah* v. *Udey Ram*, 1 L. R., R. R. S., 7).

'*Trees*' :—See notes on the heading "Transfer of trees" under section 21 p. 73 *ante*.

The presumption of law and the general rule is that property in timber on a tenant's holding rests in the landlord in the same way as, and to no less an extent than, the property in the soil itself (*Kasim Mian* v. *Banda Husain*, I. L. R., 5 All., 16; W. N., 1883, p. 169). Trees accede to the soil and pass to the landholder with the land on the termination of a tenancy, and unless a tenant uses, during the term of his tenancy, his privilege, where he has it, of removing the trees, he cannot do so afterwards; he would then be deemed a trespasser (*Ram Baran Ram* v. *Salig Ram Singh*, I. L. R., 2 All., 896). Where a tenant has been ejected in the execution of the decree of a Revenue Court for arrears of rent from the land forming his holding, his tenancy then terminates, and with it all right in the trees standing on such land or power of dealing with them. A person, therefore, who purchases the rights and interests of a tenant after his ejectment in the execution of such a decree, cannot maintain a suit for the possession of the trees standing on the tenant's holding (*Ram Baran Ram* v. *Salig Ram Singh*, I. L. R., 2 All., 896). But in the case of a tenant at fixed-rates having a transferable right in his holding, the presumption is that the trees standing thereon are the property of the tenant and not of the Zamindar (*Harbans Lal* v. *The Maharajah of Benares*, I. L. R., 23 All, 126; W. N., 1901, p. 15). A zamindar claiming a right to the fallen wood of self-sown trees which had been growing on an occupancy holding, must prove some custom or contract by which he is entitled to take such wood. The English law as to ownership under similar circumstances cannot be applied, and, (*ed quære*) there is no general rule in India to decide that there is a right in the landlord or a right in the tenant by general custom to the fallen wood of self-sown trees (*Nathan* v. *Kamla Kuar*, I. L. R., 13 All., 571; W. N., 1891, p. 167). A zamindar has a right in the trees grown on the land by the tenant, and although the tenant has a right to enjoy all the benefits of the growing timber during his occupancy, he has no power to cut the trees down and convert the timber to his own use. The zamindar may sue to have his title in the growing trees declared (*Sheikh Abdool Rohoman* v.

Dataram Bashee, W. R., 1864, p. 367). Certain occupancy ryots were, by the custom of the zamindari entitled, after obtaining the permission of the village *barna* (head man), to cut down and appropriate *agachha* (valueless) trees for fuel. No payment was ever made for such permission. The ryots cut down and appropriated some *agachha* trees grown upon the lands after they entered into possession. The zamindar sued them for damages. *Held* that, even if permission to cut the trees had not been given, the zamindar had in no way suffered damages, and had no cause of action (*Samsar Khan* v. *Lochin Dass*, I. L. R., 23 Cal, 854). Where a lease of a *mouzah* was granted for the express purpose of clearing jungle land and bringing it under cultivation, and no reservation of the right in the trees was made in the lease, it was held that the lessee had the right to appropriate the trees when cut (*Mon Mohini Goopta* v. *Raghoonath Misser*, I. L. R., 23 Cal., 209). A tenant, while cultivating certain land, planted certain trees thereon. After he had ceased to cultivate such land he sued for the possession of such trees. *Held*, that the trees went with the land, and that the tenant could not claim them when he had no interest in the land (*Jhagaru* v. *Shamshere Khan*, W. N., 1881, p. 20). A ryot mortgaged certain guava trees which he had planted on a portion of his holding. Subsequently the zamindar obtained a decree against the ryot for ejectment, and after his ejectment the mortgagees obtained a decree on their mortgage deed. *Held*, in a suit between the mortgagees and the zamindar, that their lien on the trees was destroyed by the ejectment of the ryot (*Pearun* v. *Ram Narain Sing* 1 N. W. P., 213). By the terms of a lease giving the lessee the produce of certain trees, the trees themselves do not pass to the lessee (*Sheikh Mahomed Ali* v. *Buttook Deo Narain Singh*, 1 W. R., 352).

'In the absence of a contract or local custom to the contrary' :—The presumption of law and general rule is that property in timber on a tenant's holding rests in the landlord in the same way as, and to no less an extent than, the property in the soil itself (*Kasim Mian* v. *Banda Husain*, I. L. R.. 5 All., 16; W. N., 1883, p. 169). The burden, therefore, of proving a contract or a local custom to the effect that the tenant is entitled to cut or remove any trees upon his holding, will lie on the tenant. In *Kausalia* v. *Gulab Kuar* (I. L. R., 21 All, 297 ; W. N., 1899, p. 72) it was held that the property in trees growing on a tenant's holding is, by the general law, vested in the zamindar and a tenant is not entitled, in the absence of special custom, the burden of proving which is on him, to cut down and sell such trees.

75. (1) If at the date on which the ejectment takes effect there are ungathered crops or other products upon the land, the landholder shall have the option of purchasing the same, and upon his forthwith tendering the price of the same to the tenant, the right of the tenant to such crops or other products, and to use the land for purpose of tending, gathering, and removing the same, shall cease,

Right to crops when ejectment takes effect.

(2) If the landholder does not elect to purchase the same, the tenant shall be entitled to use the land as aforesaid for a further period until such crops or other products have been gathered and removed, paying a fair rent therefor.

This section corresponds to section 42 (*b*) of Act XII of 1881.

Sub-section (1).—

'Tendering':—See notes under the heading 'Tenders' section III.

Sub-section (2) :—

'Shall be entitled to use the land':—A tenant of land to which Act No. XII of 1881 applied was duly ejected by a process under that Act. As there were crops growing on the land at the time of the tenant's ejectment, and the Zamindars had not purchased such crops, the tenant re-entered for the purpose of tending and cutting the crops. When the crops were cut the tenant refused to vacate the land. *Held*, that a suit for his ejectment as a tresspasser was, under the circumstances, properly brought in a Civil Court (*Muhammad Ibrahim* v. *Dewan*, W. N., 1896, p. 156).

'Paying a fair rent therefor':—The Select Committee in their report, printed at page 69 of the N. W. P. and O. Gazette, dated 22nd June, 1901 say :—"We have added a new section, 81A (now section 77). It is unnecessary to provide for a separate suit for the determination of the rent payable in cases under sub-section (2) of section 79 (now section 75). It will be simpler, and equally practicable, and it will lessen litigation for the Court to decide the rent so payable when the land-holder sues to recover it, the liability of the tenant to pay it having been expressly declared.

Settlement of dispute as to price of crops.

76. (1) In the case of a dispute as to the price of the crops or other products, which the landholder has elected to purchase under sub section (1) of section 75, the landholder or the tenant may sue for an adjudication as to the same.

(2) The Court shall either confirm the tender, or award such price as it may consider to be fair and equitable, and shall pass a decree for the payment of the amount.

(3) Any rent recoverable from the tenant in respect of the holding from which he has been ejected may be deducted by the landholder from the price tendered under section 75, or by the Court from the amount decreed under this section.

This section corresponds to section 42 (*c*) of Act XII of 1881.

Sub-section (1):—

'Adjudication':—When an appliction under section 95 (1) of Act XII of 1881 for appraisement of a standing crop is made, the fact that owing to the neglect of the official to whom the duty of appraisement was entrusted, the actual appraisement was not made while the crop was standing, does not prevent the appraisement being carried out. It is necessary that the crop should be standing at the time that the application for its appraisement is made (*Ganga Prasad* v. *Gauri Shankar*, S. D. B. R., No. 1 of 1886).

Limitation, jurisdiction, suit, appeal, review and revision:—Suits under this sub-section for an adjudication as to the price of crops or other products, in which the value of the subject-matter does not exceed one hundred rupees, should be filed in the Court of the Tahsildar [Section 174 (*a*)] within fifteen days from the date when the ejectment takes effect (4th schedule, group A, serial No. 1). Such suits may, however, be also disposed of by an Assistant Collector of the first class (section 172) or by the Collecter (section 173). If the suit has been disposed of by an Assistant Collector of the second class, an appeal will lie to the Collector from his decree [Sec. 176 (*a*)] within thirty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 52). A second appeal will lie to the District Judge

from the appellate decree of the Collector within thirty days from the date of the decree appealed against (Indian Limitation Act, Schedule II, Art. 152). if (*a*) a question of proprietary title has been in issue in the first appellate Court and is a matter in issue in the appeal ; or (*b*) a question of jurisdiction has been decided [Sec. 180 (2)].

Suits under this sub-section, in which the value of the subject-matter exceeds one hundred rupees, should be filed, within fifteen days from the date when the ejectment takes effect (4th Schedule, Group A, Serial No. 1), in the Court of the Assistant Collector in charge of the sub-division provided that, if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [Sec. 174 (*b*)]. Such suits may also be disposed of by a Collector (Sec. 173). An appeal will lie to the District Judge from the decree of an Assistant Collector of the first class or from that of a Collector [Sec. 180 (1)] in such suits under the provisions of section 177, within thirty days from the date of the decree appealed against (Indian Limitation Act, Schedule II, Art. 152) ; provided that when the amount or value of the subject-matter of the suit exceeds five thousand rupees, the appeal will lie to the High Court (proviso to section 177) within ninety days from the decree appealed against (Indian Limitation Act, Schedule II, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a Districe Judge in accordance with the provisions of Chap. XLII of the Code of Civil Procedure (Section 182).

As to review vide section 184.

As to revision vide section 185.

Court Fee :—The Court fee payable on a plaint or memorandum of appeal will be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal [The Court Fees Act VII of 1870, section 7 (IV) (*c*)] and *ad-valorem* fee will be payable thereon.

Sub-section (2) :—Where a landholder having ejected a tenant upon whose holding there are growing crops, applies under section 42, clause (*c*) of Act XII of 1881, for assessment of the price, he is bound by the assessment which the Revenue Court may make and cannot afterwards refuse to pay the price fixed (*Sham Lal* v. *Chokhe* I. L. R., 19 All., 68 ; W. N., 1896, p. 179 ; W. N. 1897, p. 102).

Application for execution, limitation and appeal :—An application for the execution of a decree under this Sub-section, not being a decree for a sum exceeding rupees five hundred, should be filed in the Court of the Tahsildar [Sec. 174 (*a*)] within three years from the date of the final decree in the case (4th Schedule, Group D, Serial

No. 47). Such applications would be disposed of by an Assistant Collector of the Second class (Sec. 171). But they may also be disposed of by an Assistant Collector of the first class (section 172) or by the Collector (section 173). An appeal will lie to the Collector from an order of an Assistant Collector of the second class [Sec. 176 (*b*)] within thirty days from the date of the order appealed against (4th Schedule, Group E, Serial No. 52). The order of the Collector will be final.

An application for execution of such a decree when exceeding five hundred rupees, should be filed within three years, or where a certified copy of the decree has been registered, within six years form (1) the date of the decree or order, or (2) (where there has been an appeal) the date of the final decree or order of the Appellate Court, or (3) (where there has been a review of judgment) the date of the decision passed on the review, or (4) (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper court for execution, or to take some steps in aid of execution of the decree or order, or (5) (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the Code of Civil Procedure, Sec. 248, or (6) (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date (4th Schedule, Group E, Serial No. 48 and Art. 179 of the second Schedule to the Indian Limitation Act, which see). For other matters vide under preceeding paragraph.

Court fee :—Vide under section 59.

Dispute as to rent payable how settled.

77. In a suit for arrears of rent due under sub-section (2) of section 75, if there is a dispute as to the amount of rent payable, the Court shall determine a fair and equitable rent and pass a decree accordingly.

This section is altogether new.

The select committee in their report printed at page 69 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"We have added a new section, 81 A (now Sec. 77). It is unneccssary to provide for a separate suit for the determination of the rent payable in cases under Sub-section (2) of section 79 (now section 75). It will be simpler and equally practicable, and it will lessen litigation for the Court to decide the rent so payable when the landholder sues to recover it, the liability of the tenant to pay it having been expressly declared.

Limitation, Jurisdiction, suit, appeal, review and revision :—Vide under section 102 (1).

Court Fee:—Vide under section 102 (1)

Period after ejectment not to count for right of occupancy.

78. The period during which the tenant may occupy the land in accordance with the provisions of sections 73, 74, and 75 shall not be taken into consideration in any suit or other proceeding in computing the period prescribed by section 11 for the acquisition of a right of occupancy.

This section is altogether new.

The meaning of this section is that if before ejectment a tenant has been in occupation of his holding for less than twelve years, and this period added to that during which he has been using that holding under the provisions of sections 74 and 75, exceeds twelve years, he will not acquire occupancy rights in that holding. For the purpose of section 13 the period of one year will commence from the date on which the ejectment takes effect and not from the date on which the right of the tenant to use the land under sections 74 and 75 ceases. If, therefore a tenant is re-admitted to the holding within one year from the date on which his right to use the land under sections 74 and 75 ceases, but after one year from the date on which the ejectment takes effect, he will not be deemed to have held continuously within the meaning of section 13 and he will not be entitled to acquire occupancy rights in that holding.

Remedies for Wrongful Ejectment.

Remedies for wrongful ejectment.

79. (1) A tenant ejected, otherwise than in accordance with the provisions of this Act, may sue his landholder—

(*a*) for recovery of the possession of the holding;

(*b*) for compensation for wrongful dispossession; and

(*c*) for compensation for any improvement he may have made;

Provided that, if the tenant would not have been entitled to remain in possession after the expiry of the agricultural year in which the decree is given, the

decree of the Court whether of first instance or of appeal, shall not be for recovery of possession, but for costs only, or if compensation has been claimed and found to be due, for compensation and costs only.

(2) If the decree is for recovery of possession, no compensation for an improvement shall be awarded.

(3) When a decree is given for compensation for wrongful dispossession, but without recovery of possession, the compensation awarded shall be for the whole period during which the tenant was entitled to remain in possession.

(4) A tenant who has sued for recovery of possession only shall not be entitled to institute a separate suit for compensation for wrongful dispossession in respect of the same cause of action.

(5) Nothing in this section shall bar a tenant who has sued for recovery of possession, but has failed to obtain a decree for reinstatement in his holding, from suing separately for compensation for any improvement he may have made.

This section corresponds to section 95 (*m*) and (*n*) of Act XII of 1881.

Sub-section (1):—

'Ejected':—does not necessarily mean actual physical dispossession. Where a Zamindar so interferes with the possession of a tenant, not personally occupying the land, as to induce the under-tenants to pay rent to him (the Zamindar) his interference amounts to dispossession. (*Mussamat Hoymobutty Dossee* v. *Sreekishen Nundee*, 14 W. R., 58; *Radha Madhub Panda* v. *Juggunath Dooab*, 14 W. R., 183).

'Otherwise than in accordance with the provisions of this Act':—Under Act XII of 1881, it was not quite clear whether an illegal ejectment by order of Court would amount to wrongful dispossession. The Board of Revenue in *Dhundu Bhagat* v. *Laljee Pande* (1. L. R., R. R. S., 183) and the High Court in *Thakur Din* v. *Manulal* (I. L. R., 19 All., 456; W. N., 1897, p 101) held that such ejectment was not wrongful dispossession within the meaning of section 95 of

Act XVIII of 1873, or section 95 (*m*) of Act XII of 1881 (corresponding to this section. But a contrary view was taken by the Board in the recent decision on the Oudh Rent Act in *Kharesuri* v. *Maharaja Partab Narain Singh*, (S. D. B. R., No. 4 of 1892). The tendency of the Calcutta High Court has also been in favour of the latter view (see *Golam Koodsee* v. *Kishoree Bewah*, 5 W. R., Act X, 46 : *Umrit Lal Banerjee* v. *Bhooban Mohinee Dossee*, 7 W. R., 24 ; *Ram Bhujun Bhukut* v. *Ketaye Ram Chowdhry*, 6 W. R., Act X, 22). The law has now been made clear by the words 'ejected otherwise than in accordance with the provisions of this Act,' from which it is obvious that whenever a tenant is ejected either by the landholder or by order of a Court contrary to the provisions of this Act, he would have a cause of action under this section. When a tenant sues under this section for recovery of possession if the landholder proves that he was entitled to enter on the holding under the provisions of Sub-section (1) of section 87, the Court shall presume, in the absence of evidence to the contrary, that the tenant had abandoned his holding. If the tenant rebuts such presumption by satisfying the Court that he had, in fact, no intention of abandoning his holding, he shall be entitled, subject to the provisions of Sub-section (1) of section 79, to reinstatement on such terms as the Court may think fit [Sec. 87, Sub-sections (3) and (4]

His landholder :—These words show that a tenant can bring a suit under this section against that person only who is his landholder and who is entitled to receive rent from him. A sub-tenant, for instance, cannnot bring a suit under this section against the proprietor of the and who has illegally ejected him, because the tenant-in-chief and not the proprietor is the person entitled to receive rent from the Sub-tenant. In other words, the relation of landholder and tenant must exist between the person wrongfully ejecting and the person so ejected. See notes on 'landholder' and 'tenant' under section 4 (5), p. p. 16 to 19.

Under Act X of 1859 it was held that the only suits for recovery of possession that are cognizable by the Revenue Courts under that Act are suits by a tenant who has been illegally ejected by the person entitled to receive the rent of the land or tenure (*Raj Coomar Sing* v. *Rajbunsee Kooer* W. R., 1864, Act X, 108 ; *Gooroodas Roy* v. *Ram Narain Mitter*, 7 W. R., 186 ; B. L. R., Supp. Vol., 628).

Clause (a) :—This clause corresponds to clause (*n*) of Sec. 95 of Act XII of 1881. In suing under this section the tenant must establish that the relation of landholder and tenant exists between the person who has ejected him and himself. It has been held that clause (*n*) of section 95 of Act XII of 1881 (corresponding to clause (*a*) of this section) must be taken to apply to cases in which a tenant of agricultural land

has been wrongfully dispossessed by the landlord, or, at the instance of the landlord, by some one claiming title through the landholder (*Maula* v. *Bahala* W. N., 1896, p. 169; I. L. R., 19 All., 34). S. and others, owners of a Zamindari share, leased one third of it to N. and S. N. and S. in turn Sub-leased their rights to J. R. In his agreement with N. and S, J. R. covenanted to pay part of his rent to the original lessor of whom N. and S. held. Subsequently J. R., alleging that he had been ejected from the premises sub-leased to him by two persons M and J, sued M and J for recovery of possession. *Held*, that this was not a suit to which Sec. 95, clauses (*m*) and (*n*) of Act No. XII of 1881 was applicable (*Man Rai* v. *Jai Ram Rai*, W. N., 1895, p. 77). A suit for possession of land as a tenant, where the defendant denies the tenancy will lie in the Civil Courts (*Mahabal Singh* v. *Nandan Singh*, W. N., 1885, p. 49). Under Act XVIII of 1873 it was held that the Civil Courts were precluded by the provisions of Sec. 95 of Act XVIII of 1873 from taking cognizance of a claim to obtain possession of a tenant-holding based on the averment that the zamindar, the real defendant, had sanctioned a mortgage of the holding to the plaintiff, and appropriated the mortgage-money in satisfaction of arrears of rent due by the tenant, the mortgagor and *pro forma* defendant, and that, having placed the plaintiff into possession, he had subsequently wrongfully dispossessed him (*Muazzim Ali Khan* v. *Sheo Parshad*, 7 N. W. P., 259). Under this section the Courts have only to see whether the tenant has been illegally ejected. The question of a prescriptive right of occupancy cannot arise in a case where a tenant sues to recover possession of land from which he alleges he has been illegally ejected. The tenant might have been in lawful possession only six weeks, and yet his eviction might have been illegal, and he would be entitled to recover (*Shaikh Bahadoor Ali* v. *Domun Singh*, 7 W. R., 27; *Crowdy* v. *Jhukree Dhanook*, 23 W. R., 387). Clause (*a*) of this section refers only to possessary action against the person entitled to receive the rent, and not to suits in which the plaintiff sets out his title and seeks to have his right declared and possession given him in persuance of that title (*Jooroodoos Roy* v. *Ramnarain Mitter*, 7 W. R., 186; B. L. R., Sup. Vol., 628). Plaintiff sued to recover possession of land from which he stated he had been illegally ejected. He had never been in possession of the land which he claimed under a document alleged to be a valid *patta*. *Held*, that this was matter for a Civil suit in the ordinary Courts, and not one cognizable by the Collector under clause (6), section 23, Act X of 1859 [Corresponding to clause (*a*) of this section] (*Jodoonath Ghose* v. *Ranee Sookh Moye Dassee*, 1 W. R., 201). The Rent Courts have no jurisdiction in a case where the tenant alleged to have been unlawfully ejected

has not *bona fide* cultivating possession of the land, and where the case is practically brought for the determination of the disputes of rival sharers as to their shares (*Shahzad Singh* v. *Pancham Singh*, 3 L. R., R. R. S., 4). A siut for dispossession between two ryats, with which the Zamindar has nothing to do except as a witness on one side is cognizable not by the Collector under section 23, Act X of 1859, (corresponding to this section), but by the Civil Court (*Radhanath Muzoomdar* v. *Purikhit Bodrik*, W. R, 1864, Act X, 60; *Kally Doss Banerjee* v. *Bonomalee Dass*, W. R., 1864, Act X, 61). Section 95 (*n*) of the N. W. P. Rent Act (XII of 1881) is applicable to a suit by the lessee of an occupancy tenant to recover possession of the land under the lease, from which the lessor has ejected him; and such a suit is exclusively cognizable by the Revenue Court (*Chiddu* v. *Narpath*, I. L. R., 8 All., 62; W. N., 1885, p. 332). A suit for possession of immoveable property brought by a person claiming by virtue of a perpetual lease, and dispossessed by lessor for non-payment of a sum of money as *nazarana* forming the consideration of the lease, is such as might have been made the subject of applications under section 95, clauses (*m*) and (*n*) of the N. W. P. Rent Act (XII of 1881), and is nol cognizable by a Civil Court (*Asghar Ali* v. *Sheopal Singh*, W. N., 1889, p. 24). But where the plaintiff sues as perpetual lessee of some of the defendants, alleging that in breach of their contract with him they have given possession as mortgagees to the other defendants over a part of the land leased to him, it was held that the suit was cognizable by the Civil Court (*Haridas* v. *Gopee Rai*, W. N., 1886, p. 137). A suit to establish a lease granted by the defendant and to obtain possession of the village comprised in the lease was held to be cognizable in the Civil Courts (*Chait Ram* v. *Hira*, W. N., 1881. p. 54). The Court of wards gave a lease of some land to the plaintiffs. Before the expiration of this lease, the heirs of the Wards gave a lease of the land to the defendants who thereupon took certain proceedings in the Revenue Court and obtained an order for possession of the land. The plaintiffs brought a suit to set aside the *patta* granted to the defendants and to recover possession of the land. *Held*, that as the plaintiffs treated the defendants not as tenants, but as trespassers holding the land under an illegal *patta*, the suit lay in the Civil Court (*Lila Dhar* v. *Bhajju Khan*, W. N., 1885, p. 332). The Plaintiffs, alleging that they were the occupancy tenants of certain land, that they had sub-let its cultivation to the defendants, and that the defendants had denied that title and set up a claim to be the tenant-in-chief under the Zamindar, sued in the Civil Court to establish the right they claimed to the land and for possession of the

land. *Held*, that the cognizance of the suit in the Civil Court was not barred by section 95 of Act XII of 1881 (*Ribban* v. *Partab Singh*, I. L. R., 6 All., 81., W. N., 1883, p. 222; *Lalu* v. *Sadiya*, W. N., 1882, p. 62). A plaintiff brought a suit in a Civil Court alleging that he was entitled to the possession of certain land as a tenant at fixed-rates, and that in consequence of the order of a Settlement Officer he had been dispossessed by certain persons, alleged by him to be trespassers without title, whom he made defendants together with the Zamindar of the land in dispute. *Held*, that in as much as the plaintiff could, under the circumstances indicated in his plaint, have obtained no relief from a Court of Revenue, the Civil Court was competent to entertain the suit and to give the plaintiff a decree for possession as against the defendant, other than the Zemindar, who were found to be trespassers, notwithstanding that the Civil Court could not declare what was the nature of the plaintiff's tenancy (*Dukhna Kunwar* v. *Unkar Pande*, I. L. R., 19 All., 452; W. N., 1897. p. 105). When a Zemindar on the death of an occupancy tenant refused to admit his heir to possession of the occupancy holding and took possession of it, it was held that the proper remedy of the heir was by an application under sec. 95 (*n*) of Act XII of 1881 (Corresponding to clause (*a*) of this section), and not by suit in a Civil Court (*Bani Bai* v. *Parbati*, W. N., 1893, p. 196). The Wajib-ul-arz of a village contained a clause to the effect that the landholder is in the habit of sowing indigo in his tenants' fields, that the rent of the field for the time they are under indigo is deducted from the tenants rent, and that the fields are restored to the tenants after the indigo is cut. *Held*, that the landholder is not thereby anthorized to take possession of a tenant's land to sow indigo against the tenants' wish, (*Ram Subhak Chaube* v. *Rae Rukmani Sewak Singh*, S. D. B. R., No. 12 of 1891). Where plaintiff had been illegally ejected and sued to recover possession alleging that he held a pattah and had paid rent for the land, and the defendant denied the plaintiff's possession, and it was found that the pattah and receipts for rent were spurious but that the plaintiff had been in possession, for a long time, it was held that as plaintiff had failed to establish his right to recover possession the mere fact of his having been in possession is not a sufficient ground for putting him back in possession for he could only be looked upon as a trespasser, and as such it required no process of law to enable defendant to eject him (*Shushtee Dhur Mozoomdar* v. *Nuteeja Bibee*, 7 W. R., 36). Under Act X of 1859, sec. 23, clause (6), (corresponding to this section) the Collector's Court is one of limited jurisdiction, and has no power to determine

a question of right to the land larger than the bare *right to possession.* Where a Zamindar persues his right to eject in a manner that is not legal, possession will be restored, although if the Zamindar had proceeded legally, he could have ejected his rayat, (*Gunga Gobind Roy* v. *Kali Chand Surma Gangooli*, 20 W. R., 455). A rayat admitted by some only of the share holders, if ejected by the others as a trespasser cannot claim possession (*Ganesh Ram Singh*, *Appellant* decided by the High Court of Calcutta December 5th 1865). Where a tenant holding over after the expiration of his lease is wrongfully dispossessed, he has a right to be restored to possession ; and he has the same right if, having been ejected during his lease, his lease expires pending a suit to recover possession (*Saikh Arub* v. *Ashruf*, 24 W. R., 335). A tenant who was ejected under section 35 of Act XII of 1881, but against whom, as was subsequently found, no unsatisfied decree remained, was held entitled to be re-instated (*Khub Singh* v. *Amin Khan*, S. D. B. R., No. 19 of 1884). The plaintiffs alleging themselves to be occupancy tenants and to have been wrongfully dispossessed by their landlords who had made a lease of the land in suit, sued the landlords and their lessee for recovery of posssession and for damages. *Held*, that such suit was exclusively cognizable by a Court of Revenue (*Tarapat Ojha* v. *Ram Ratan Kuar*, I. L. R., 15 All., 387 ; W. N., 1893, p. 164). The plaintiff gave to the defendant a lease of a certain village, including *mal* and *Sayar* items. After the expiry of the term of the lease, the plaintiff's sued the defendant in a Court of Revenue for arrears of rent. The defendant, though no distinct claim for a set off was made in his written statement, set up the following defence namely that during the continuance of the lease to him the plaintiffs had allowed certain other persons to enter on a part of the property leased, to dig earth, and to remove and sell the earth for the purpose of making bricks ; and that this was done without the defendant's permission. *Held* by Strachey, C. J., and Bnnerji J., that the acts alleged by the defendant against the plaintiffs did not amount to a dispossession of the defendant within the meaning of Sec. 95 (*m*) of Act XII of 1881. *Held* by Aikman, J., that the acts alleged against the plaintiffs by the defendant amounted *pro tanto* to a dispossession of the defendant from the area concerned and that the defendant had a remedy in the Court of Revenue under Sec. 95 (*m*) or (*n*) of Act XII of 1881 (*Hafiz Suleman* v. *Baroda Das*, W. N., 1899, p. 143). A landholder served a notice of ejectment on G, under the provisions of section 36 of the N. W. P. Rent Act, as a tenant-at-will. Uunder the provisions of Sec. 39 of that Act G. contested his liability to be ejected, on the ground that he was not a tenant-at-will, but one holding by virtue of an agreement executed in

his favor by the landholder. The question of G's liability to be ejected was decided adversely to him, and he was ejected under section 40 of that Act. He subsequently sued the landholder in the Civil Court for possession of the land, by virtue of the agreement alleging that his ejectment was a breach of such agreement. The landholder's defence to this suit was that G. had been rightfully ejected. *Held* that, in as much as the relation of landlord and tenant between the parties at the time of the proceedings under the Rent Act was admitted, and the dispute in the suit could appropriately form the subject of an application under clause (*n*) of Sec. 95 of that Act, the suit was not cognizable in the Civil Courts (*Ganga Ram* v. *Beni Ram*, I. L. R., 7 All., 148 ; W. N., 1884, p. 312). A tenant who has been wrongfully ejected is entitled to recover the land with the crops growing upon it which have been put in by a new tenant. The intermediate tenant has his remedy against the landholder in the Civil Court (*Shirajdee Pramanick* v. *Emam Buksh.* 13 W. R., 104 ; *Mustan Shah* v. *Udey Ram*, 1 L. R., R. R. S., 7).

Burden of proving wrongful ejectment :—lies upon the plaintiff (*Asgur* v. *Goluck Chunder Chowdhry*, 8 W. R., 383).

Suit for confirmation of possession :—Suits by a rayat for confirmation of possession in a tenure which is threatened are not cognizable under the Rent Act (*Rittoo Raj Rae* v. *Juggeshur Rae*, 1 N. W. P. part II, p. 40). In order to entitle a tenant to sue under this section there must have been ejectment, and therefore a suit for maintenance of possession in the holding from which the plaintiff was not actually ejected does not come under this section (*Dawlat Rai* v. *Gya Misser*, 2 Agra, 95 ; *Sheodan Singh* v. *Seetul Singh*, S. D. A., N. W. P., 137 of 1865, May 19th 1865).

Parties to suit under this section :—In a suit for recovery of possession under this section the plaintiff must join, as a defendant in the suit, every person in possession claiming through his landholder (sec. 81).

Effect of failure to prove dispossession on the date mentioned in the plaint :—A plaintiff's failure to prove dispossession on a particular date mentioned in the plaint is not a sufficient ground for the dismissal of the suit (*Huro Chander Chowdhry* v. *Gobind Chander Moitra*, 15 W. R., 178 ; *Boga Kolita* v. *Thoolessur Kayasta.* 24 W. R., 357)

Suit by heir or representative for recovery of possession of a holding from which his predecessor in title has been wrongfully ejected :—When a Zamindar on the death of an occupancy tenant refused to admit his heir to possession of the occupancy holding and took possession of it himself, it was held that

the proper remedy of the heir was by application under sec. 95 of Act XII of 1881 and not by suit in a Civil Court (*Dani Bai* v. *Parbati*, W. N., 1893, p. 196). A rayat claimed to succeed to his deceased brother's holding in a suit for possession under clause (6), sec. 23, Act X of 1859 (Corresponding to this section). *Held* that it was wrong to refer him to a regular suit, on the ground that there had been no actual dispossession. The landlord, by withholding possession, coustructively ejects the tenant, and whether the act is legal, is a question triable by a Revenue Court (*Ram Dhan Singh* v. *Peer Bakhsh*, S. D. A., N.-W. P., 548 of 1861, July 31st, 1862). Where the plaintiff sues on the ground that, having been in possession of, and cultivated, land of an occupancy rayat during her life time, he is entitled to succeed to possession at her death, he might sue under the Rent Act (*Pem Kooer* v. *Upper Dabe Singh*, 2 N.-W. P., 86). A purchaser of a tenure at a sale in execution of a decree who has never been able to obtain any substantive or real possession and whose title, as well as that of the person whose rights he purchased, is contested, cannot sue to recover the land under clause (6), Sec. 23, Act X of 1859, but must proceed by suit in the Civil Court to prove his title in the ordinary way (*Rajah Anundnath* v. *Junmeyjoy Biswas*, 8 W. R., 240). A suit for possession by a purchaser from a tenant whose right to sell is questioned by the Zamindar, is cognizable only in the Civil Court, and not under clause (6), sec. 23, Act X of 1859 (*Kanaye Mollah* v. *Dev Nath Roy*, 3 W. R., Act X, 161).

Limitation :—See under clause (*b*) of this section.

Jurisdiction, suit, appeal review and revision :—See under clause (*b*) of this section.

Court fee :—See under clause (*b*) of this section.

Clause (b) :—This clause corresponds to clause (*m*) of Sec. 95 of Act XII of 1881. A landlord who ejects his tenant illegally and holds possession as a wrong doer, although he settles another tenant on the land, is liable, not only for the rent he receives during such possession but also for the damages incurred by the tenant whom he has ejected, in consequence of the ejectment (*Mahomed Azmul* v. *Chadee Lall Pandey*, 12 W. R., 104). In a suit by an ejected lessee to recover a year's balance of rent from his lessor, who had given a lease to another party and dispossessed the plaintiff, it was held that by granting the later lease, the defendant had made himself responsible for any loss which might thereby be occasioned to the plaintiff, even though he (the lessor) had not collected the rent himself (*Gobind Chand Jutee* v. *Mun Mohun Jha*, 14 W. R., 43). A party who has been active in wrongfully keeping

another out of the possession and enjoyment of property is liable for consequential damages whether he derived any profit himself from the possession of the land or not (*Ghoogly Sahoo* v. *Chundee Pershad Misser*, 21 W. R., 246). In a suit for mesne profits or compensation the plaint need only state approximately the amount sued for (Sec. 50 of the Code of Civil Procedure). In a suit for the recovery of possession of a holding the Court may provide in the decree for the payment of rent or mesne profits in respect of such holding from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three year's from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit (Sec. 211 of the Code of Civil Procedue). In a suit for possession in which mesne profits are expressly prayed for, the plaintiff is bound to put forward his whole claim for such profits, and is not entitled to reserve a portion to be made the subject of another suit (*Ram Ruttun Audo* v. *Ram Chunder Pal*, 25 W. R., 113; see also Sec. 43 of the Code of Civil Procedure). A superior holder who dispossesses a rayat is liable, not merely for the profit which he makes by letting out the land, but to make good the loss which the rayat sustains by being dispossessed (*Hurruck Lall Shaha* v. *Sreenibash Kurmokar*, 15 W. R., 428). A court cannot give a decree for damages unless the extent of such damages is proved to its satisfaction (*Kisto Mohun Mookerjee* v. *Juggurnath Roy Jogee*, 11 W. R., 236). The principle upon which mesne profits are awarded is that a party is entitled to receive from the person,but for whose wrongful acts he would have realized profits, damages in such a shape, and to such an extent, as to cover his loss. Interest on mesne profits may therefore be awarded from the date of ascertainment thereof (*Mobaruk Ali* v. *Boistub Churn Chowdhry*, 11 W. R.. 25). Where upon the expiry of the term of a lease, but without the written notice of ejectment required by section 36 of Act XII of 1881 having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease, it was held that the second lessees were wrong-doers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor or of the expenses they had incurred in collecting the rents (*Shitab Dei* v. *Ajudhia Prasad*, I. L. R., 10 All., 13; W. N., 1887, p. 269).

Limitation :—Suits for the recovery of the possession of a holding or for compensation for wrongful dispossession or for both should be brought within six months from the date when the wrongful dispossession takes place (4th Schedule, Group C, Serial No. 30). The failure of

a tenant to ppply under section 95 (*n*) of the N. W. P. Rent Act, 1881, for the recovery of the occupancy of land, of which he has been wrongfully dispossessed, within the period of six months after the date of dispossession prescribed for such applications has the effect not only of barring the tenant's remedy, but of extinguishing the tenant's right to the occupancy of the land (*Dalip Rai* v. *Deoki Rai*, I. L. R., 21 All., 204 ; W.-N., 1899, p. 36). Certain tenants were dispossessed by their Zamindars, as they alleged, wrongfully. The dispossessed tenants did not avail themselves of the remedy provided by section 95, clause (*n*), of Act XII of 1881 ; but some time after the expiry of the period of limitation prescribed for an application under that section they dispossessed the Zamindars, who had meanwhile taken the land in suit into their own cultivation. The Zemindars thereupon sued in the Civil Court for the ejectment of the former tenants as trespasses. *Held*, that the defendant could not set up in answer to this suit their status as tenants, which they had lost by not availing themselves within limitation of the means provided by section 95, clause (*n*) of Act XII of 1881, to contest their own ejectment *Dalip Rai* v. *Deoki Rai*, *Dalip Rai* v. *Sukhdeo Rai* ; *Dalip Roy* v. *Jokhu Rai*, I. L. R., 20 All., 471 ; W. N., 1898, p. 116. (*Ram Lal* v. *Chuni Lal*, W. N. 1904, p. 281 ; A. L. J. Vol. I. p. 69.)

Jurisdiction, suit, appeal, review and revision :—Suits under this section should be filed in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [section 174 (*b*)]. Such suits would be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of the Collector (sec. 180 (1)], as the case may be, will lie to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 53). A second appeal will lie, under section 181, to the Board from the decree of the Commissioner within ninety days from the date of the decree appealed against (4th schedule, Group E, Serial No. 54).

As to review vide sections 183 and 184. As to revision vide section 185.

Court Fee :—In a suit for recovery of possession of land from which a tenant has been illegally ejected, the court fee will be computed according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint [sec. 7, sub-sec. XI (*e*), of Act VII of 1870].

In a suit for compensation the court fee will be computed according to the amount claimed (sec. 7, sub-sec. I of Act VII of 1870).

In a suit both for recovery of possession and for compensation the plaint or memorandum of appeal will be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits for recovery of possession or for compensation would be liable (Sec. 17 of Act VII of 1870).

Proviso :—

'If the tenant would not have been entitled to remain in possession after the expiry of the agricultural year in which the decree is given' :—In other words, if the landholder can eject the tenant in accordance with the provisions of this Act after the expiry of the agricultural year in which the decree is given. Before giving a decree for possession it is, therefore, necessary for the Court to determine whether the tenant is an occupancy tenant, or whether he will acquire occupancy rights with the expiry of the agricultural year in which the decree is given, or whether, after the expiry of the agricultural year in which the decree is given, the tenant is entitled to hold the land under sections 47 (*b*), 55 and 157 (4).

Sub-section (3) :—

'For the whole period during which the tenant was entitled to remain in possession :—If before the expiry of the year for which the tenant is entitled to remain in possession, the tenant could have sown any crops on the land, the decree for compensation should include the price of such crops, though such crops could not be reaped till after the expiry of the year for which he was entitled to hold. The provisions of secs. 74 and 75 would apply to such a case.

Sub.section (5) :—

'Failed to obtain a decree for reinstatement :—If the tenant fails to obtain a decree for reinstatement in his holding, because his suit for recovery of possession is barred by time, even then he would be entitled to bring a separate suit for compensation for an improvement. The cause of action for a suit for compensation for an improvement does not arise until the decree refusing reinstatement of the tenant is passed (Vide 4th Schedule, Group C, Serial No. 31, Column 5).

Limitation, jurisdition, suit, appeal, review and revision :—Suits for compensation for an improvement, brought after a suit for recovery of possession has failed as regards reinstatement of the tenant, should be filed within three months from the date of the decree refusing reinstatement of the tenant (4th Schedule, Group C, Serial No. 31) in the Court of the Assistant Collector

in charge of the Sub-division; provided that if there is no Assistant Collector in charge of the Sub-division, such suits should be filed in the Court of the Collector [Sec. 174 (*b*)]. Such suits would be disposed of by an Assistant Collector of the first class (Sec. 172) or by the Collector (Sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [Sec. 180 (1)] will lie to the Commissioner (Sec. 172) within sixty days from the date of the decree appealed against (4th Schedule. Group, E, Serial No. 53). A second appeal will lie to the Board from the decree of a Commissioner under the provisions of section 181 within ninety days from the date of the decree appealed against (4th Schedule Group E, Serial No. 54).

As to review Vide sections 183 and 184.

As to revision Vide section 185.

Court Fee:—The Court fee payable on a plaint or memorandum of appeal in a suit for compensation for an improvement brought under this sub-section will be computed according to the amount of the rent payable by the tenant (4th Schedule, Group C, Serial No. 31, 6th Column).

Remedies when decree or order for ejectment reversed.

80. (1) When a Court of appeal or revision reverses a decree or order for the ejectment of a tenant, and the tenant would not have been entitled to remain in possession after the expiry of the agricultural year in which the decree or order of the Court of appeal or revision is given, the decree or order shall not be for recovery of possession, but for costs only.

(2) When a decree or order for ejectment is reversed by a Court of appeal or revision—

(*a*) if the decree or order in appeal or revision is for recovery of possession,

the tenant shall be entitled to sue his landholder for compensation for the period during which he remained out of possession;

(*b*) if the decree or order in appeal or revision is not for recovery of possession,

the tenant shall be entitled to sue his landholder

for compensation for the whole period during which he was entitled to remain in possession.

This section is new.

Sub-section (1) :—

'If the tenant would not have been entitled to remain in possession after the expiry of the agricultural year in which the decree is given' :—See under section 79, clause (1).

Sub-section (2), clause (*b*) :—

'For the whole period during which he was enlitted to remain in possession' :—See under section 79 clause (3).

'Limitation, jurisdiction, suit, appeal, review and revision' :—Suits under this section for compensation for ejectment under a decree or order subsequently reversed should be filed within six months from the date on which the decree or order is reversed (4th Schedule, Group C, Serial No. 32) in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division such suits should be filed in the Court of the Collector [sec. 174 (*b*)]. Such suits would be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [sec. (180 (1)] will lie to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 53). A second appeal will lie to the board from the decree of a Commissioner under the provisions of section 181, within ninety days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 54).

As to review vied secs. 183 and 184.

As to revision vide sec. 185.

Court fee :—The Court fee payable on a plaint or memorandum of appeal in a suit for compensation under this section will be computed according to the amount claimed [Sec. 7 (I) of the Court Fees Act VII of 1870].

81. When a tenant sues under section 79 for recovery of possession, he shall join, as a defendant in the suit, every person in possession claiming through his landholder.

Who must be joined in suit under section 79.

This section is new.

The Select Committee in their report printed at page 69 of the N. W. P. and O. Gazette, dated 22d June, 1901, say:—"We have made it obligatory on a tenant who sues for recovery of possession to make any person who is actually in possession, and claims to be so under the tenant's landholder, a party to his suit. The fact of such a person being in possession has given the tenant notice of his interest in the proceedings." See also *Ram Lal* v. *Chunni Lal* W. N. 1904. p. 281; A. L. J., Vol. II., p. 69.

This section enjoins the joinder as a defendant of that person only who is in actual possession of the holding. If, for instance, the tenant's landholder has left the holding to A and A has sublet the holding to B, the dispossessed tenant is bound under this section to join B as a defendant and not A, because the dispossessed tenant cannot be expected to know that there is an intermediate tenant, A, between B and the tenant's landholder. If, however, the tenant has notice that between the person in possession of the holding and his (the tenant's) landholder there are intermediate tenants who have interest in the holding, they should be made defendants under section 28 of the Code of Civil Procedure.

Possession to be delivered.

82. The provisions of section 71 shall apply, *mutatis mutandis*, to the execution of a decree for the reinstatement of a tenant in his holding.

This section is new.

Surrender.

Surrender of holding by tenant.

83. (1) A tenant, not bound by a lease or other agreement for a fixed period, may at the end of any agricultural year surrender his holding; but he shall not be entitled to surrender a portion only of his holding.

(2) Notwithstanding such surrender, unless the tenant before the first day of April gives to the landholder notice in writing of his intention to surrender he shall be liable to the landholder for the rent of the holding for the agricultural year next following the date of the surrender:

Provided that the tenant shall not be so liable in respect of any period during which the holding is let to another tenant, or is taken into his own cultivation, or use, by the landholder.

(3). Nothing in this section shall affect any arrangement by which a tenant and his landholder may agree to the surrender of the whole or any portion of a holding.

This section corresponds to section 31 of Act XII of 1881 and to section 86 of the Bengal Tenancy Act.

Sub-section (1) :—

'Not bound by a lease or other agreement for a fixed period' :—e. g., holding from year to year. This section does not apply to lessee who has contracted for a definite specified interest in the land. The contract or lease must regulate the whole relation between the lessor and lessee, not only in regard to the time of commencement and continuance, but also in regatd to the termination of the holding (*Dwarka Doss* v. *Gokul Doss.* 1 Agra, Rev., 22). But it seems that this section does not prohibit the surrender of a holding by a tenant bound by a lease or other agreement for a fixed period if he gives, under sub-section (2) a notice to the landholder of his intention to surrender the holding at the end of the agricultural year with which the period fixed in his lease or other agreement expires. In such a case the tenant would stand, in the last year of his holding, in the position of a tenant who is not bound by a lease or other agreement for a fixed period. But in *Tiluck Pattuck* v. *Mohabeer Pandey* (15 W. R., 454) it was held that a rayat is under no obligation to relinquish his holding merely to entitle him to give up the holding at the termination of a short lease under which he holds. He may give up the land at the end of the term without giving a notice of relinquishment.

'Other agreement' :—An agreement never to surrender is invalid and the tenant may, in spite of such agreement, surrender his holding in a legal manner (*Gopal Pal Chowdhry* v. *Tarinee Pershad Ghose*, 9 W. R., 89).

Effect of surrender upon the interests of sub-tenants :—

Where an occupancy tenant grants a lease of land forming part of his occupancy holding for a term of years he cannot during the subsistence of such term relinquish his holding to the Zamindar so as to put an end to his lessee's rights under the lease (*Badri Prasad* v.

Sheodhian, I. L. R., 18 All., 354; W. N, 1896, p. 109). And on the same principle it has been held that a tenant entitled to mortgage his holding who has made a usufructuary mortgage of his holding and put the mortgagee in possession, cannot, during the subsistence of such mortgage, relinquish his holding to the prejudice of the mortgagee's rights (*Rannu Rai* v. *Rafi-ud-din*, W. N., 1904, p. 170). A tenant who, with the implied consent of his landlord, has mortgaged his holding, cannot resign it to the landlord. He may resign the equity of redemption. But till the mortgage has been redeemed the mortgagee is entitled to retain possession (*Sheoumbur Rai* v. *Sheobhung Rai*, 1 N.-W. P., 45). When a tenant who holds land for a term, under-lets that land, he parts with his own interest therein to the extent of the interest created by the under-lease, and cannot, therefore, determine the interest of his under-tenant by surrendering his own term to the landlord (*Heeramonee* v. *Gunganaraın Roy*, 10 W. R., 384). Where a lessor gives his lessee power to sub-let and the latter sub-lets, the sub-lessee obtains rights against both of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee (*Nehaloonissa* v. *Dhunnoo Lall Chowdhry*, 13 W. R., 281). A Zamindar having mortgaged by way of usufructuary mortgage his Zamindari together with his *sir* lands, lost his Zamindari rights and became an ex-proprietory tenant of the *sir*. *Held*, that in such a case the ex-proprietary tenant could not, to the prejudice of the mortgagee, surrender to the Zamindar his ex-proprietary interest (*Sham Dass* v. *Batul Bibi*, I. L. R., 24 All, 538; W. N., 1902 p. 155).

From the above rulings it will appear that the tendency of the Allahabad High Court has been to disapprove of relinquishment by tenants to the prejudice of their sub-tenants. But the Board of Revenue has been holding a contray view. *Sira* v. *Mukhram*, (S. D. B. R., File No., 1659 of 1896, printed at p. 333 of Jacob's Selected Decisions of the Board of Revenue), *Ram Daur Rai* v. *Musammat Hasina Bibi*, (S. D. B. R., File No. 244 of 1896, printed at p. 334 of Jacob's Selected Decisions of the Board of Revenue) and *Kallu* v. *Allah Bakhsh*, (S. D. B. R., File No. 1746 of 1896, printed at p. 335 of Jacob's Selected Decisions of the Board of Revenue) the Board dissented from the decision in (*Badri Pershad* v. *Sheodhan* I. L. R., 18 All., 354) and held that in a suit for ejectment between the Zamindar and a lessee of an occupany tenant who resigned his holding during the currency of the sub-lease which he had granted, the sub-lessee cannot resist the notice of ejectment on the ground of his being a sub-tenant. In *Gulzari Mal* v. *Lachmi Chand* (S. D. B. R., No. 1 of 1898) the Board held that an occupancy tenant is not disabled from relinquishing land held by him

under a right of occupancy by the fact of his having granted a sub-lease of that land to a third party. Such relinquishment by an occupancy tenant extinguishes the rights of all persons holding through him. The conflict of decisions of the two highest tribunals in these Provinces has been set at rest by section 28 of this Act, which provides that if a tenant sub-lets his holding, his relinquishment before the expiry of the sub-lease cannot prejudice the interest of the sub-tenant; all covenants binding and enforceable as between the tenant and the sub-tenant will be binding and enforceable as between the tenant's landholder and the sub-tenant.

Relinquishment of ex-proprietary rights:—Vide under Sec. 11, p. 44 *ante*,

Evidence of relinquishment:—Act No. 12 of 1881 and the Acts of a like nature, which preceded it assume that a tenancy of agricultural lands once entered upon continues until determined by effluxion of time, or by mutual consent, or in one of the ways provided for by statutory enactment; but mere non-payment of rent does not of itself determine the tenancy. Hence where the lands of certain tenants became submerged by the action of a river, and the tenants though they ceased to pay rent during the period of submersion, made no overt indication of their intention to relinquish the said lands, but, on the contray, on the river again shifting its course laid claim to lands which had emerged and which they alleged to be identical with their former holding it was held that there had been no relinquishment (*Mazhar Ali* v. *Ramgat Singh*, I. L. R., 18 All., 290; W. N., 1896, p. 56).

Effect of relinquishment by occupancy tenant upon co-sharers in the tenancy:—K, the occupancy tenant of a certain land, to whom the landholder had granted a lease thereof for a certain term, gave the latter a Kabuliat containing the following clause:—"On the expiration of the term the landholder shall have the power to keep the said land under my cultivation at the former rent, or at an enhanced rent as may be agreed upon between the parties, or he may make over the land to some other cultivator at an enhanced rent fixed by himself." K died before the expiration of the lease, and was succeeded by his sons. On the expiration of the lease the landholder sued K.'s sons for possession of the land, claiming under the Kabuliat. *Held*, that an occupancy tenant cannot, by a lease, convey to the Zamindar an ousting power to the prejudice of those who have become by inheritance co-sharers in the right of occupancy or on whom such right has devolved upon his death. He may relinquish his holding, but such relinquishment cannot deprive those who are in possession at the time and entitled by law to continue in possession

the occupancy holding (*Lalji* v. *Nuran*, I. L. R., 5 All., 103; *Laljee* v. *Musammat Umran*, 3 L. R., H. C. S., 185).

'**Portion of holding**':—In *Sarodo Soonduree Debee* v. *Hazee Mahomed Mundul* (5 W. R., Act X, 78) and *Anarullah* v. *Kailash Chundra Basu* (I. L. R., 8 Calc., 118) it was held that part of a holding cannot be surrendered. But vide sub-section (3) to this section, which lays down the case when a portion of a holding may be surrendered.

Sub-section (2).

'**Notice**':—The notice must be clearly and explicitly worded (*Janki Khatik* v. *Maharajah of Benares*, 1 L. R., R. R. S., 41). It is sufficient if the notice shows what it is about although it is not in the exact words in which it should be worded (*Radha Bullab Ghose* v. *Beharee Lall Mookerji*, 12 W. R., 537). A notice is good if without containing the exact words of the law, it states with sufficient precision the nature of the notice, so that the persons served with it may not be misled, and can clearly comprehend what it deals with (*Mc. Giveran* v. *Hurkhoo Singh*, 18 W. R., 203). An objection as to the form of the notice connot be upheld if no prejudice has thereby been worked to the persons served with it (*Audh Beharee Singh* v. *Dost Mahomed*, 22 W. R., 185). A notice is not informal because it does not bear the signature of the persons giving it, if it is obvions from whom it comes (*Huronath Roy* v. *Mrinomoyee Debi*, W. R., 1864, Act X, 56). In a joint tenancy the notice must be given by all the co-sharers jointly [Sec. 194 (1)]. When only one of two or more co-tenants presents a notice of relinquishment, such notice is not binding on any co-tenants who do not join (*Ishri Singh* v. *Ganga Prasad*, S. D. B. R., No. 7 of 1884). A notice otherwise sufficient, is not invalidated because it refers also to other lands not in occupation of the tenant, or in respect of which he cannot give a notice of surrender; but it is good so far as it is applicable to the portion of the land which the tenant is entitled to surrender (*Newaj Bundopadhya* v. *Kali Prosonno Ghose*, I. L. R., 6 Calc., 543). A notice is good for that part to which it is applicable (*Gubdoo Mull* v. *Hoolasee*, 2 Agra, 247). A mere clerical omission does not invalidate the notice (*Ryesunnissa Begum* v. *Bydonath Saha*, 17 W. R., 354). One notice is sufficient for several holdings in the occupation of a tenant. It is not necessary that a separate notice should be given for each holding. All that is necessary is that it should be distinct for each holding (*Mc Giveran* v. *Duriaw Chowdhry*, 20 W. R. 479). A defective notice is no notice at all and service of such a notice is tantamount to non-service (*Rajkissen Roy* v. *Prankissen Roy*, W. R.,

1864, Act X., 89). A notice of relinquishment which is not followed by an act of relinquishment does not cause a break in cultivation so as to affect the right of occupancy (*Ishri Singh* v. *Ganga Prasad*, S. D. B. R. No. 7 of 1884). Notice alone is not sufficient; it must be followed by actual relinquishment (*Kuar Sen* v. *Darro Kuar*, W. N., 1893, p. 182; *Nobeen Chunder Roy Surmah* v. *Luckhee Prea Debee*, 1 W. R., 20; *Bani Singh* v. *Shaikh Ghulam Ali*, S. D. B. R., No. 8 of 1885).

'In writing':—Relinquishment in order to be valid need not be in writing (*Chundermonee Nya Bhooshun* v. *Sumbhoo Chunder Chuckerbutty*. W. R., 1864, 270; *Muneeruddeen* v. *Mahomed Ali*, 6 W. R., 67). An occupaucy tenant relinquished his holding and signed a memorandum of the relinquishment in a book kept by the landholder showing transactions between him and the tenant. The memorandum was not stamped or registered. *Held*, that the relinquishment was not required by sec. 91 of the Evidence Act to be in writing, but might be made verbally, or in writing, or by action (*Rai Singh* v. *Vansittart*, W. N., 1889, p. 3). But in *Inayutullah Khan* v. *Jai Lal* (W. N., 1898, p. 31) the High Court expressed an opinion that a relinquishment in order to be a valid relinquishment must be in writing. In *Khonkar* v. *Abdur Rahaman Ali Hafez* (5 C. W. N., 351) it was held that there may be a valid surrender of an occupancy holding without a written document.

Writing is necessary only in the case of a notice of surrender, in order to relieve the tenant of his liability to pay rent for the agricultural year next following the date of the surrender; but in the cases mentioned in the proviso to Sub-section (2), the tenant will not be so liable for rent if he does not give notice *in writing* of his intention to surrender.

'To the landholder:—*i. e.*, to his landholder.

'Shall be liable to the landholder for the rent of the holding':—Mere proof of notice of relinquishment without proof of actual relinquishment cannot protect a tenant from liability for rent (*Nobeen Chunder Roy Surmah* v. *Lukhee Prea Debee*, 1. W. R., 20). Relinquishment does not excuse a tenant from payment of arrears of rent that have accrued prior to relinquishment (*Cazee Syud Mahomed Azmul* v. *Chundee Lall Pandey*, 7 W. R., 250). The heirs of an occupancy tenant who dies intestate are liable to pay rent whether they occupy land or not, until they surrender the holding in accordance with law (*Peary Mohun Mookerjee* v. *Kumaris Chunder Sarkar*, I. L. R., 19 Calc., 790).

Onus of proof of relinquishment:—Where a tenant is found to have taken steps required by law in furtherance of his intended

relinquishment, it is for the landlord to prove his continued possession notwithstanding. But where it is found that the tenant has not gone through the necessary steps, it will be for him to prove that the landlord took possession of the land and enjoyed the profits by holding it *khas*, or by letting it to others (*Erskine* v. *Ram Coomar Roy*, 8 W. R, 221). Where a tenant-at-will, who has been dispossessed by his landlord, alleges that he has been ejected without notice under sec. 36 of Act XVIII of 1873 and against his consent, the landlord, to maintain the ejectment, must produce either the tenant's written relinquishment, or prove service of a notice on him by the tenant under sec. 31 of the same Act (corresponding to sec. 83 of this Act) [*Achraj Sahu* v. *Sheotahal Sahu*, 1 L. R., R. R. S., 68].

No Compensation for improvement can be claimed after relinquishment :—Section 90 lays down the cases in which a tenant is entitled to compensation for improvements made by him. As relinquishment is not one of those cases, it is evident that after relinquishment no claim for compensation for improvements can be made.

Proviso :—Where a tenant is found to have taken steps required by law in furtherance of his intended relinquishment, it is for the landlord to prove his continued possession notwithstanding. But where it is found that the tenant has not gone through the necessary steps, it will be for him to prove that the landlord took possession of the land and enjoyed the profits by holding it *Khas*, or by letting it to others (*Erskine* v. *Ram Coomar Roy*, 8 W. R., 221). Where land relinquished by the original tenant is settled by the zamindar with other rayats, the former rayat cannot be held liable for rent, even though his relinquishment was not accompanied by a notice given in writing (*Mahomed Ghasee* v. *Shunker Lall*, 11 W. R., 53).

Sub section (3) :—This sub-section seems to refer to those cases in which by agreement between a tenant and his landholder the holding of the tenant is, in whole or in part, changed and other land given to him instead.

Agreement to relinquish :—An agreement to relinquish holding is void as opposed to public policy. See also sec. 3.

The defendant who was a tenant with a right of occupancy in the land cultivated and held by him, executed a Kabuliat in respect of the said land in favor of the plaintiffs (his landlords), agreeing that on the expiry of the term fixed in the Kabuliat he should have no claim to retain possession of the cultivatory holding, but that he should give it up. Plaintiffs sued for the ejectment of the defendant

on the basis of the agreement, and obtained a decree from the lower Appellate Court. On second appeal by the defendant it was held that in as much as the plaintiffs sought to enforce the covenant contained in the *Kabuliat* in such a manner as to extinguish the rights of occupancy found upon the facts of the case to have been acquired by the defendant in the land in suit, such suit must fail, as opposed to the policy of the law (*Kawri Thakurai* v. *Ganga Narain Lal*, I. L. R., 10 All., 615 ; W. N., 1888, p. 239).

Surrender upon enhancement of rent.

84. Notwithstanding anything in the last preceding section, when a decree or order for the enhancement of the rent of any holding is passed, and the tenant thereof within fifteen days of the date of such decree or order gives to the landholder notice in writing of his desire to surrender such holding at the commencement of the period in respect of which such enhancement takes effect, and surrenders such holding accordingly, he shall not be liable for the rent payable for such holding in respect of any period subsequent to such surrender.

This section corresponds to section 31 of Act XII of 1881.

'And surrenders such holding' :—A mere notice of relinquishment is not sufficient. It must be followed by an act of relinquishment (*Ishri Singh* v. *Ganga Prasad*, S D. B. R. No. 7 of 1884 ; *Nobeen Chunder Roy Surmah* v. *Luckhee Prea Debee*, 1 W. R., 20). An occupancy tenant can relinquish his occupancy rights, but there must be an act of relinquish nent, *i. e.*, physical giving up of possession, and merely a written paper is not sufficient *Beni Singh* v. *Shaikh Ghulam Ali*, S.D.B. R., No. 8, of 1885).

Service through Tahsildar of notice of surreunder.

85. (1) If the landholder refuses to receive any notice under section 83 or section 84, the tenant may, before the expiry of the period limited for giving such notice, make an application to the Tahsildar, who shall thereupon cause the notice to be served on such landholder, the tenant paying the costs of service.

(2) Every such notice shall be deemed to have been received at the time it was first tendered.

Sub-section (1):—This sub-section corresponds to sec. 32 of Act XII of 1881.

Refuses to receive any notice:—Before a valid notice of surrender of his holding can be served on a landholder through the Tahsildar under the provisions of this section, it is a condition precedent that the tenant should have himself given notice under sec. 83 or sec. 84 and that the landholder should have refused to receive such notice (*Sumera* v. *Piare Lal*, W. N., 1905, p. 201).

Before the expiry of the period limited for giving such notice:—An application for service of notice under sec. 83 should be made before the first day of April (sec. 83), and that under section 84 within fifteen days of the date of the decree or order for enhancement (sec. 84).

Non-service of notice by Tahsildar:—The non-service of notice by the Tahsildar cannot affect the rights of the tenant, if he can prove that, previous to the application to the Tahsildar, he had given actual notice direct to the landlord himself or to his authorized agent (*Erskine* v. *Ram Coomar Roy*, 8W. R., 220).

Limitation, jurisdiction, application, appeal, review and revision:—An application under this sub-section for the service of a notice of surrender should be filed in the Court of the Tahsildar [sec. 85 (1) and sec. 174 (*a*)], who will dispose of the application sec. 171). An appeal will lie to the Collector from the order of the Tahsildar on such applications [sec. 176 (*b*)]. The order of the Collector will be final.

As to review vide sec. 184.

As to revision vide sec. 185.

Court-fee:—Applications for service of notice of relinquishment are exempt from Court-fees (sec. 19, clause XII, Act VII of 1870 and 4th Schedule, Group D, Serial No. 40, 6th Column). But a memorandum of appeal will be chargeable with a Court-fee of eight annas [Art. 11 (*a*) of the second schedule to Act VII of 1870].

Sub-section (2):—This sub-section corresponds to sec. 33 of Act XII of 1881.

Suit by landholder to set aside notice.

86. (1) When any such notice has been received by or served on a landholder, he may institute a suit to have such notice declared invalid, and the Court shall thereupon determine the question between the parties.

(2) If the landholder does not institute such suit he shall be deemed to have accepted the surrender.

This section corresponds to sec. 33 A of Act XII of 1881.

In order to entitle a landholder to institute a suit to have a notice of surrender declared invalid, the landholder must show (a) that the notice was given after the expiry of the period limited for giving such notice, or (*b*) that the notice relates only to a portion of the holding, or (c) that the notice was defective or not properly served, or (d) that the notice was not given by all the tenants of a joint holding, or (e) that the tenant who gave the notice is bound by a lease or other agreement for a fixed period which has not expired, or (f) that no relation of landholder and tenant exists between the parties.

Limitation, jurisdiction, suit, appeal and revision :—Suits under this section should be filed within fifteen days from the date of the receipt or service of the notice (4th Schedule, Group C, Serial No. 33) in the Court of the Assistant Collector in charge of the sub-division; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (*b*)]. Such suits would be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [sec. 180 (1)] will lie to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 53). A second appeal on any of the grounds specified in sec. 584 of the Code of Civil Procedure will lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs (sec. 181) within ninety days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 54).

As to revision vide secs. 183 and 184.

As to review vide sec. 185.

Court-Fee :—The Court-fee payable on a plaint in a suit under this section is eight annas [4th Schedule, Group C, Serial No. 33, 6th Column]

Abandonment.

Abandonment of holding by tenant.

87. (1) When a tenant has ceased to cultivate his holding either by himself or by some other person, and has left the neighbourhood without arranging for the payment of his rent as it falls due and giving notice to the

landholder of such arrangement, the landholder may, at any time after the fifteenth day of May, enter on the holding and let it to another tenant, or take it into his own cultivation.

(2) Before the landholder enters under this section he shall file a notice in the office of the Tahsíldár for service on the tenant stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Tahsíldár shall cause a notice to be published in such manner as the Local Government, by rule, directs.

(3) When a tenant sues under section 79 for recovery of possession, if the landholder proves that he was entitled to enter on the holding under the provisions of sub-section (1) of this section, the Court shall presume, in the absence of evidence to the contrary, that the tenant had abandoned his holding.

(4) If the tenant rebuts such presumption by satisfying the Court that he had, in fact, no intention of abandoning his holding, he shall be entitled, subject to the provisions of sub-section (1) of section 79, to reinstatement on such terms as the Court may think fit.

This section is new and corresponds to sec. 87 of the Bengal Tenancy Act.

The provisions of this section are not exhaustive. They do not prescribe the only mode in which a holding can be abandoned. The Select Commitee in their report printed at page 69 of the N. W. P. and O. Gazette, dated 22nd June, 1901, say :—"In the opinions on the Bill which we have considered, there are numerous suggestions that an attempt should be made to define 'abandonment.' Any attempt to give a precise defination of 'abandonment' would, in our opinion, be unwise. It is impossible to bring within the compass of a definition all the various circum stances which might go to constitute abandonment. At the same time we think it is possible to indicate the circumstances in which a landholder

would be justified in assuming that the tenant had abandoned his holding, and in entering on the land, without being rendered liable for the payment of compensation if the tenant returns and at the same time to reserve to the tenant the right to recover possession if he can show that he had not in point of fact abandoned his holding."

Sub-Section (1) :—

Abandonment :—If a tenant leaves the neighbourhood after having sub-let his holding to a third person and arranging with such person for the payment of the rent of his holding direct to the landholder, he cannot be said to have abandoned the holding But if a rayat, not having a transferable tenure, quits possession, makes over his interests and gives over the land to a third person, he may be treated as having abandoned all rights formerly possessed by him in the land (*Hurreehur Mookerjee* v. *Jodwonath Ghose*, 7 W. R., 114). Where the defendants had purchased the rights of the original tenants of certain non-transferable *jot* land without obtaining the consent of the landlord to the transfer of the tenures and the original tenants had remained in possession as sub-tenants of the transferees, it was held that the original tenants must be taken to have abandoned their holding (*Kallinath Chakrabarty* v. *Upendra Chunder Chowdhry*, I. L R., 24 Calc. 212). When a rayat, without giving any notice, goes away from the land he has occupied, and neither cultivates it nor pays rent, the landlord is justified in assuming that he has abandoned it (*Ram Chung* v. *Gora Chand Chnng*, 24, W. R., 344 ; *Muneeruddeen* v. *Mahomed Ali*, 6 W.R. 67 ; *Nuddear Chand Podder*, v. *Modhoo Soodun Dey Poddar*, 7 W. R., 153 ; *Chundermonee Nya Bhooshun* v. *Sumbhoo Chunder Chuckerbutty*, W. R., 1864, p. 270 ; *Golam Ali Mundul* v. *Golap Soondery Dassee*, I. L. R., 8 Calc., 612). A rayat having left his homestead in his Zamindar's Village and built a new house elsewhere, the Zamindar sent him a letter enquiring why he had run away, and giving him notice to appear and arrange about the *jote*. The rayat gave no answer, and did nothing in the matter. The Zamindar then gave a fresh *patta* to a new rayat. *Held* that the rayat had abandoned the land and the Zamindar had the right to re-let it to another (*Huro Doss* v. *Gobind Bhuttacharjee*, 12 W. R., 304). Mere non-payment of rent does not necessarily forfeit the right of a tenant, unless it can be proved that he has actually abandoned the land (*Musyalulla* v. *Noorzahan*, I. L. R , 9 Calc., 808 ; *Obhoya Charan Bhooia* v. *Koylash Chunder Dey*, I. L. R., 14 Calc., 751 ; *Nilmony Dassy* v. *Sonatun Dashavi*, I. L. R., 15 Calc., 17) Act No. XII of 1881 and the Acts of like nature which preceded it assume that a tenancy of agricultural lands once entered upon continues until determined by effluxion of time or by a mutual consent, or in one of the ways provided for by statutory enactment ; but mere non-payment of rent does not of itself determine

the tenancy. Hence where the lands of certain tenants became submerged by the action of a river, and the tenants, though they ceased to pay rent during the period of submertion made no overt indication of their intention to reliquish the said lands, but on the contrary, on the river again shifting its course, laid claim to lands which had emerged and which they alleged to be identical with their former holding ; it was held that there had been no relinquishment (*Mazhar Rai* v. *Ramgat Singh*, I. L. R., 18 All., 290 ; W.-N., 1896, p. 56). The non-cultivation of a small portion of an ancestral *jote* by the admitted holders for one year owing to their minority, does not amount to abandonment, (*Radha Madhub Pal*, v. *Kalee Churn Pal*, 18, W. R., 41). When the house had fallen to the ground and the land being deserted by the tenant, the Zamindar was held justified in taking possession of the land as abandoned (*Badam* v. *Michel*, 1 Agra, 226 ; *Bannoo Bebee* v. *Sheo Buns Kando*, 13 Agra, Rev., 9).

Sub-section (2) :—

'Notice' :— It is not the notice which terminates the tenancy but the voluntary abandonment coupled with acts on the part of the landlord (not necessarily limited to the giving of notice) indicating that he considers the tenancy at an end, and it is for the Court in each case to determine whether the tenancy has terminated (*Lal Mamud* v. *Arbullah* 1 C. W. N., 198). When a rayat sold his non-transferable holding and was no longer in possession of it and paid no rent for it, and the landlord brought a suit for ejectment against both transferor and transferee, it was held that the landlord was entitled to a decree and no notice under Sec. 87 of the Bengal Tenancy Act (corresponding to this section) was necessary (*Samujan Rai* v. *Munshi Mahaton*, 4 C. W. N., 493).

The provisions of this sub-section are compulsory. If, when a tenant has abandoned his holding the landholder enters upon it without filing the notice mentioned in this sub-section he will not be entitled to the benefit of the presumption mentioned in sub-section (3).

Sub-section (4).

'No intention of abandoning his holding' :—Notwithstanding the fact that the tenant's act amounted to abandonment within the meaning of sub-section (1) of Sec. 87.

On such terms as the Court may think fit :—*e. g.*, on such terms as to payment of rent for the term during which the tenant was absent and had ceased to cultivate the holding.

No compensation for Improvement can be claimed after abandonment : Section 90 lays down the cases in which a tenant is entitled to compensation for improvement made by him. As abandonment is not one of those cases it is evident that after abandonment no claim for compensation for improvements can be made.

CHAPTER VI.

IMPROVEMENTS.

Right of tenants with right of occupancy to make improvements.

88. Every tenant, not being a non-occupancy tenant, shall be entitled to make an improvement :

Provided that, in the absence of any local custom to the contrary, no tenant, except a permanent tenure-holder or a fixed-rate tenant, shall be entitled, without the written consent of the landholder, to plant trees.

This section is new.

'Non-occupancy tenant' :—Vide section 19 and notes thereunder.

'Improvement' :—Vide section 4 (12) and notes thereunder, pp. 25 to 28 *ante*. An occupancy tenant may, if such well be an improvement, construct either a kachcha or pacca well, on his holding without any reference to the consent of the Zamindar (*Dharamraj Kunar* v. *Sumeran Singh*, I. L. R., 21 All., 386 ; W. N., 1899, p. 133).

'In the absence of any local custom' :—The Select Committee in their report printed at page 69 of the N. W. P. and O. Gazette, dated 22nd June, 1901 say :—" It has been brought to our notice that there are instances in which there is a local custom recorded in the *wajib-ul-arz* under which tenants can plant trees without the landholder's consent. Where such a custom is established it cannot be ignored."

Liability of tenant to ejectment for planting trees without consent of landholder :—If a tenant not entitled to plant trees without the consent of the landholder does plant trees, he will be liable to ejectment under section 57 (*b*) on the ground that he has done an act detrimental to the land in his holding.

'Suit by Zamindar for removal of trees planted by tenant not cognizable by Civil Court' :—The plaintiff alleged in his plaint that he being the Zamindar, and the defendants being, respectively, tenant and sub-tenant of an agricultural holding, the defendants had without his permission planted certain trees on the holding, thereby committing an act detrimental to the land and injurious to the plaintiff ; and he prayed for a mandatory injunction directing the defendants to remove the trees and to restore the land to its original condition. *Held* that the suit involved a dispute or matter in which a suit of the nature

mentioned in section 93 of Act XII of 1881 might have been brought, and was therefore not cognizable by a Civil Court, (*Kanhaya Lal* v. *Huriyan*, W. N., 1901, p. 164).

Contract barring tenant from making improvements :—Nothing in any lease or agreement made between a landholder and a tenant on or after the first day of April, 1900, shall take away or limit the right of a tenant to make improvements in accordance with the provisions of this Act [sec. 3 (2) (*b*)].

Right of non-occupancy tenants to make wells.

89. A non-occupancy tenant shall be entitled to construct, maintain, and repair a well for the irrigation of his holding, with all works incidental thereto; but shall not be entitled, without the written consent of his landholder, to make any other improvement in respect of his holding :

Provided that if the landholder desires to construct the well himself, he shall have a prior right to do so :

Provided, also, that—

(1) no tenant in sír land shall be entitled to make any improvement in respect of his holding without the written consent of his landholder ; and

(2) no sub-tenant shall be entitled to make any improvement in respect of his holding without the written consent of the proprietor.

This section corresponds to sec. 44 of Act XII of 1881 and to sec. 79 of the Bengal Tenancy Act.

'Non-occupancy tenant' :—Vide sec. 19 and notes thereunder, p. 68 *ante*. But see also clauses (1) and (2) of the second proviso to this section.

'Well' :—Where an occupancy tenant, apparently without the consent of his Zamindar, constructed a *pakka* well on his occupancy holding, it was held that the zamindar was not competent to sue for the demolition of the well (*Muhammad Raza Khan* v. *Dalip*, W. N., 1892, p. 103).

'Without the written consent of the proprietor' :—If a sub-tenant makes any improvement with the written consent of the

proprietor, his landholder (the tenant-in-chief) cannot eject him without paying compensation for the improvement made by him.

Compensation for improvements.

90. A tenant who has made an improvement which he is entitled to make shall be entitled to compensation for such improvement in the following cases :—

(*a*) When an order for his ejectment is given under section 61 ;

(*b*) When a decree for his ejectment is passed under section 63 ; and

(*c*) When he has been wrongfully dispossessed by his landholder and has not recovered possession of his holding.

This section corresponds to Sec. 44 of Act XII of 1881.

Contrat barring tenant from claiming compensation for improvements :—Nothing in any lease or agreement made between a landholder and a tenant on or after the first day of April, 1900, shall take away the right of the tenant to claim compensation for improvements in accordance with the provisions of this Act [Sec. 3 (2) (*b*)].

'Which he is entitled to make' :—Vide Sec. 88 and 89.

Clauses (a), (b) and (c) :—When proceedings under Sec 61 are in progress, as well as when a suit for the ejectment of a tenant is brought under Sec. 63, the tenant may claim compensation, and the Court will have to decide such claim (Sec. 70). If he does not claim compensation at that time he will not be entitled subsequently to bring a separate suit for compensation for improvements, because there is no provision in this Act that such a separate suit would be maintainable. The case is however different when a tenant has been wrongfully dispossessed by his landholder and has failed to recover possesssion of his holding. In such a case a separate suit would lie under Sec. 79 (5).

Rent-free grantee :—A grantee, whose service grant is resumed cannot claim compensation on account of improvements. (*Maharaja Raja Ramji* v. *Abdulla Khan*, S. D. B. R. No. 4 of 1904.)

Valuation of compensation.

91. In estimating the amount of compensation due to a tenant for an improvement made by him the Court shall have

regard—

(*a*) to the amount by which the letting value or the produce of the holding or the value of that produce is increased by the improvement;

(*b*) to the condition of the improvement and probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement, allowing for—

(i) any reduction or remission of rent or any other advantage allowed to the tenant by the landholder in consideration of the improvement;

(ii) any assistance given to the tenant by the landholder in money, material or labour; and

(iii) in the case of reclamation or of the conversion of unirrigated to irrigated land, the length of time during which the tenant has had the benefit of the improvement.

This scetion corresponds to Sec. 83 of the Bengal Tenancy Act and to Sec. 72 of the Punjab Tenancy Act, and clause (*c*) of this section corresponds to Sec. 47 of Act XII of 1881.

The Select Committee in their report printed at page 70 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say:—"The estimate may be based either on the increase in the letting value of the land due to the improvement and its probable duration or with reference to the labour and capital required for, not necessarily that expended on the construction of the improvement, and when thus calculated, allowance must be made for the landholder's contribution (if any) to the cost of construction and the benefits the tenant has already derived from it."

Where in determining the issue as to a tenant's right to compensation, it is necessary to go into the question of the value of any improvement effected by the tenant, the Court must proceed to make the enquiry called for. The outlay incurred by the tenant, though it may aid the Court in conducting the enquiry, must not be taken as the sole criterion of the

value of the improvement. The points for determination are (1) has the letting value of the land been increased owing to the improvement or not ; (2) if so, will the effect of the improvement be permanent or temporary ; (3) if compensation is due to the tenant, do all or any of the considerations mentioned in section 47 of Act XII of 1881 apply? (*Dilraj Singh* v. *Thakur Debi Dayal Singh*, S. D. B. R., No. 12 of 1885).

Clause a) :—In determining the compensation payable to a tenant for a work of improvement, the Court should look not so much to the actual outlay incurred as to the extent to which the annual letting value of the land has been, and at the time of demanding compensation continues to be increased (*Bahadur Brahman* v. *Saiyid Afzal Ali*, S. D. B. R., No. 3 of 1886).

Clause (c) (i) :—When granting compensation to a tenant who has made improvements on his holding, the Court should take into consideration, in favour of the landlord, the fact that the lease under which such tenant held was of a beneficial nature. (*Zorawar Singh* v. *Lala Buksh*, 1. L. R., R. R. S., 15).

'**Capital**' :—Compensation for improvements only includes the cost of the actual improvements, and not money spent unnecessarily on supposed or alleged improvements (C. J., No. 1, P. R., 1872).

Clause (c) (iii) :—The money value of the tenant's labour in reclaiming waste lands may be given as compensation, but damages cannot be awarded as compensation (C. J. No. 35, P. R, 1877).

Improvement benefiting land from which tenant is not ejected.

92. (1) When the improvement benefits both the land from which the tenant is to be ejected and other land in the occupation of the same tenant, the compensation payable to the tenant shall be estimated with reference to the extent to which the land from which the tenant is to be ejected has benefited by such improvement.

(2) If the improvement has been executed on the land from which the tenant is to be ejected, the landholder, on payment of the compensation awarded to the tenant, shall become the owner of the improvement, but the tenant shall be entitled to the benefit of the improvement in respect of the land

remaining in his occupation, to the same extent and in the same manner as that land has hitherto benefited by the improvement.

(3) If the improvement has been executed on land which remains in the occupation of the tenant, the landholder, on payment of the compensation awarded to the tenant, shall be entitled to the benefit of the improvement in respect of the land from which the tenant is ejected to the same extent and in the same manner as the land has hitherto benefited by it.

This section is new.

The Select Committee in their report printed at page 70 of the N.-W. P. and O. Gazette, dated 22nd june, 1901, say ;— "It has been found necessary in veiw of the definition of the term improvement in section 2 (12) [now section 4 (12)] to make express provision for cases in which compensation is given for an improvement which, though executed on other land, benefits the land from which the tenant is to be ejected and, on the other hand, when it is given for an improvement made on the land from which the tenant is to be ejected, but which benefits other land remaining in his occupation."

Sub section (1) :—Where a well (the alleged improvement) watered other land besides that which the defendent occupied as tenant to the plaintiff, it was held that the assessment of compensation should have reference only to the proportionate benefit that plaintiff's land derives from the well, and should not be measured by the expense of making the well. (C. J. No. 1, P. R., 1872).

93. (1) When compensation is found to be payable to the tenant under section 70 or section 61, the landholder may apply to the Court to be allowed to give, in lieu of the sum payable or in lieu of part thereof, a beneficial lease of the holding or of some other holding, or to make compensation in some other manner.

Landholder's right to make other than money compensation.

(2) If the tenant agrees to accept such beneficial

lease or other form of compensation, the decree or order under section 70 or section 61 shall be modified accordingly.

(3) If the tenant refuses to accept a beneficial lease, and if the Court, after examining the tenant and making such further inquiry as it may deem necessary, is of opinion that the lease is suited to the circumstances of the tenant, and will adequately compensate the tenant for the improvement in respect of the whole or part of the compensation decreed, as the Court may determine, and that the tenant has no valid reason for refusing to accept the lease, the Court shall allow the tenant one month within which to come to terms with the landholder, and if within that time, or within such further time (if any) as the Court may think fit to allow, the tenant accepts the lease, and such acceptance is certified by him to the Court, the Court shall proceed as provided in sub-section (2);

and if the tenant does not accept the lease within such time he shall forfeit his right to so much of the compensation payable as would have been covered by the beneficial lease.

(4) No compensation other than a beneficial lease shall be decreed or ordered in lieu of money, except with the consent of the tenant.

(5) Every application under sub-section (1) shall be made within one month from the date of the decree or order under section 70 or section 61.

This section corresponds to section 45 of Act XII of 1881.

Limitation, jurisdiction, application, appeal review and revision :—Applications under this section for permission to give compensation otherwise than by payment of money for an improvement made by a tenant should be filed within one month from the date of the decree

or order under section 70 or section 61 [sec. 93 (5) and 4th Schedule Group D, serial No. 41] in the Court of the Tahsildar (Assistant Collector of the second class) [section 174 (*a*)] who has power to dispose of such applications (sec. 171). An appeal from an order of an Assistant Collector of the second class will lie to the Collector [sec. 176 (*b*) within thirty days from the date of the order appealed against (4th Schedule, Group E, serial No. 52). The Collector's order in appeal will be final.

As to review Vide sec. 184.

As to revision Vide sec. 185.

Court Fee:—The Court fee payable on an application under this section will be eight annas [The Court Fees Act VII of 1870, schedule II, Art. 1 (*b*)]. The Court fee payable on a memorandum of appeal will also be eight annas [The Court Fees Act VII of 1870, schedule II, Art. 11 (*a*)].

Disputes as to right to make improvement &c.

94. If a question arises between a tenant and his landholder—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement, the Assistant Collector in charge of the sub-division may, on the application of either party, decide the question, and his decision shall be final.

This section corresponds to sec. 78 of the Bengal Tenancy Act.

Clause (*a*):—The right of a tenant to make an improvement would in a majority of cases, depend upon the nature of the tenancy, and the Court may have to go incidentally into the question as to whether the tenant is a fixed-rate, ex-proprietary, occupancy, or non-occupancy tenant, or whether he is a sub-tenant or a tenant in *sir*-land. But such a finding, it seems, will not debar either the tenant or the landholder from suing under sec. 95 for a declaration as to the class to which the tenant belongs, because the finding under sec. 94 would necessarily be a summary one.

Clause (*b*);—

Limitation and jurisdiction.—An application under this section for decision as to whether a work is an improvement, or as to the right to make it, should be filed in the court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant collector in charge of the sub-division, such an application should be filed in the court of the Collector [sec. 174 (*b*)].

There is no period of limitation for an application under this section (4th Schedule, Group D, serial No. 42, 4th and 5th Columns).

Court fee :— The court fee payble on an application under this section will be eight annas [The court fees Act VII of 1870, schedule II, Art. 1 (*b*)].

CHAPTER VII.

MISCELLANEOUS PROVISIONS REGARDING TENANCIES.

Suits respecting rights in tenancies.

95. At any time during the continuance of a tenancy either the landholder or the tenant may sue for a declaration as to any of the following matters, namely :

(*a*) the name and description of the tenant of the holding ;

(*b*) the class to which the tenant belongs ;

(*c*) the situation, area, numbered plots, or boundaries of the holding ;

(*d*) the rent payable in respect of the holding and whether payable in cash or kind ;

(*e*) the time, place, and manner of appraisement, division or delivery of crops for rent ; and

(*f*) the dates on which, and the instalments in which, the rent is payable.

This section corresponds to secs. 10 and 95(*a*) of Act XII of 1881 and to sec. 158 of the Bengal Tenancy Act.

Object and scope of this section :—The object of this section is to enable the Court to ascertain what are the *existing* arrangements between a landlord and his tenant, and not to enable the Court in effect to make a new contract for parties between whom no contract was in existence at and before the date of the suit (*Debendro Kumar Bandopadhya* v. *Bhupendro Narain Dutta*, I. L. R., 19 Calc., 182). The question whether a holding is transferable cannot be gone into under this section (*Purna Rai* v. *Bangshidhar Singh*, 3 C. W N., 15). In a proceeding under this section the Court has no jurisdiction to assess additional rent for excess lands found to be in the occupation of the tenant, its function being limited to recording the existing rent payable by the tenant at the time of the suit (*Srinarain Thakur* v. *Rameswar Singh*, 5 C. W. N., cciii), nor can the Court in a suit under this section

pass a decree for enhancement of rent (*Rajeswar Prasad Singh* v. *Barta Koer*, I. L. R., 21 Calc., 807). An application under section 158 of the Bengal Tenancy Act (corresponding to this section), which under colour of asking for the determination of the incidents of a tenancy really seeks to set aside the lease under which the tenant came into possession, does not come within the scope of the provisions of this section (*Debendro Kumar Bandopadhya* v. *Bhupendro Narain Dutta*, I. L. R., 19 Calc. 182).

During the continuance of a tenancy:—These words show that in order to bring a suit under this section there must admittedly be the relation of landholder and tenant between the parties at the time the suit is brought. Where, however, in a suit brought by a landholder against a tenant under this section the plaintiff denies the relation of landholder and tenant between himself and the defendant, his remedy lies in the Civil Court. The plaintiffs sued in the Munsiff's Court for a declaration that certain land was their *Sir*, denying that any relation of landlord and tenant subsisted as between themselves and the defendants. *Held* that such a suit was within the cognizance of a Civil Court (*Moti Singh* v. *Ram Kishun Singh*, W. N., 1892, p. 46). But where in a suit brought by a landholder against the tenant under this section, the defendant pleads that the relation of landholder and tenant does not exist between the plaintiff and himself on the ground that he actually and in good faith pays the rent of his holding to some third person, the procedure mentioned in section 198 will be followed. If in any suit against a person alleged to be the plaintiff's tenant the defendant pleads that he is not a tenant, but has a proprietary right in the land, the procedure mentioned in sec. 199 will apply.

A tenant must be in possession to enable him to sue under this section. If he has been forcibly ejected, he would have a right to sue under sec. 79 (*Janki Parshad* v. *Dolan Singh*, S. D. B. R., No. 5 of 1885.)

Jurisdiction—Civil and Revenue Courts:—The effect of section 95 (*a*) and section 10 of the N.-W. P. Rent Act (XII of 1881) is to deprive the Civil Courts of Jurisdiction to take cognizance of any suit the object of which is to declare, as between the zamindar and tenants, the status of the tenants. A Civil Court has no jurisdiction to entertain a suit in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs pray for a declaration that certain entries of the defendants in the Revenue records as occupancy tenants, and certain orders of the Revenue Court maintaining these entries be set aside, and that the defendants are *Shikmis* and not occupancy tenants, and that the land in question is the plaintiff's *Sir* land. *Held* that such a suit cannot be brought within the Civil Court's Jurisdiction by dropping

all the reliefs claimed except the last mentioned declaration, that being merely of importance as incidental to the previous ones, and as a round about mode of obtaining a declaration that the defendants are not the plaintiff's occupancy tenants (*Mahesh Rai* v. *Chandar Rai* I. L. R., 13 All., 17 ; W. N., 1890, p. 235). A Civil Court has no jurisdiction to entertain a suit the decision of which necessarily involves the determination of the class of tenancy of one or other of the parties to it (*Sakina Bibi* v. *Swarath Rai*, I. L. R., 15 All., 115 ; W. N., 1893, p. 11). Nawal, who was recorded as occupancy tenant in a holding, died. On his death his collateral heirs, Narpat, Barkat and Tula, sons of his cousin and Paltu, grandson of his cousin, were recorded by order of the Settlement Officer as non-occupancy tenants ; the Settlement Officer leaving them to establish their rights as occupancy tenants in the Revenue Courts. Narpat then applied under sec. 95 (*a*), Act XII of 1881, for the determination of his tenure, claiming to have shared in the cultivation of the holding with Nawal in his life time, and to be an occupancy tenant. When this application was pending, the Zamindar, Ganga Ram, instituted a suit against Narpart in the Civil Courts, to have it declared that Narpat did not share in the holding of Nawal during his life time and a declaratary decree was passed to that effect. The application for determination of tenure was then withdrawn. The zamindar issued a notice of ejectment on Narpat and the plaintiffs, to which the plaintiffs objected under section 39, Act XII of 1881, alleging that they were occupancy tenants. The Assistant Collector upheld the objection, and the Collector to whom this order was appealed dismissed the appeal. *Held*, that under sec. 95, Act XII of 1881, the Munsiff by whom the declaratary decree was passed was unable to take cognizance of the matter in question, and that his decree was in no way binding on the Revenue Courts (*Tula* v. *Ganga Ram*, S, D. B. R., No, 6 of 1891).

A suit for a declaration that the plaintiffs are proprietors of a village, and the defendants are tenants thereof at the will of the plaintiffs, and liable to have the rent enhanced at the will of the plaintiffs, is, as regards the claim for a declaration of right, cognizable in the Civil Courts, but not as regards the other claims, such claims raising questions under sec. 10 and sec. 95, (*a*) and (*b*), N. W. P. Rent Act 1881 exclusively cognizable in the Revenue Court (*Antu* v. *Ghulam Muhammad Khan*, I. L. R., 6 All., 110 ; W. N., 1883, p. 239). A suit brought by persons to whom sec. 4 of Act XII of 1881 (corresponding to Sec. 7 of this Act) applies, viz., permanent tenure holders, against their Zamindars for a declaration that they were *Janwadhdars* and for a declaration that an entry in the recent settlement that the plaintiffs were tenants at fixed-rates instead of inferior proprietors, would not lie in a Civil Court (*Jai Gopal* v. *Radha Prasad*

Singh, W. N., 1894, p. 81). The plaintiffs sued in a Civil Court alleging that they were tenants at fixed rates of a cultivatory holding and that at the Settlement the Settlement Officer had entered the defendants in the Village papers as tenants at fixed-rates and the plaintiffs merely as mortgagees, and they asked for a decree for maintenance of possession "invalidating the proceeding of filling up the columns at the recent Settlement." *Held* by the Full Bench that the suit so framed was not within the cognizance of a Civil Court (*Ajudhia Rai* v. *Parmeshar Rai*, I. L. R., 18 All., 340 ; W. N., 1896, p. 95). A suit to establish a lease of a village granted by the defendant is cognizable by the Civil Courts *Chait Ram* v. *Hira*, W. N., 1881, p. 54). K, sold his proprietary rights in a *mouza* to B. Six weeks afterwards, K executed a deed by which he relinquished in favour of B his rights as an exproprietary-tenant in his *Sir* land. Sometime after K distrained the crops grown on the *Sir* land by certain sub-tenants who, K alleged, held the land from him. B. objected to the distraint. The Collector decided on appeal, that the deed of relinquishment was invalid and that therefore the distraint was lawfully made. Thereon B brought this suit in the Civil Court praying that his possession of the land should be maintained as a *khud kasht* holding, that the deed of relinquishment should be established and that the decree of the Collector should be set aside. *Held*, that the suit was not cognizable by the Civil Courts (*Baldeo* v. *Kundan* W. N., 1893, p. 27). Plaintiff let certain land to B for cultivation. Subsequently plaintiff's lessor caused a notice of ejectment to be served on the ground that he was an occupancy tenant, and this objection was allowed by the Revenue Courts. Plaintiff thereupon brought a suit in the Civil Court for possession of the land and for a declaration that defendant had no right to the land. *Held*, that as the plaintiff admitted that the defendant was a tenant and as the only question before the Court actually was what was the nature of the defendant's tenancy, the suit was not cognizable by the Civil Courts, and that the claim for possession which was in different words a suit for ejectment was much the less cognizable (*Maharaja of Benares* v. *Angan*, I. L. R , 7 All., 112 : W. N., 1884, p. 275). On the death of an occupancy tenant S alleging himself to be entitled to possession of the occupancy holding as the heir of the deceased tenant, applied in the Court of Revenue to have his name entered in the village papers as occupancy tenant of the deceased's holding in succession to him. The Zamindars were made parties to this proceeding. The Court of Revenue decided in favour of the applicant and the Zamindar's appeal was dismissed. *Held* that no suit would lie in a Civil Court on the part of the Zamindars for a declaration that they and not S were entitled to possession of the occupancy holding in question, and

that it should be declared that S was not the heir of the deceased tenant (*Subarni* v. *Bhagwan Khan*, I. L. R., 19 All., 101 ; W. N., 1897, p. 1). The plaintiffs claimed before the Settlement Deputy Collector to be recorded as tenants-in-chief with rights of occupancy in certain land. Prior to making this claim in the Settlement Court they filed an application for determination of tenure in the Court of the Assistant Collector in charge of the Pargana, and were declared to be tenants with right of occupancy. An application for review was presented to the Assistant Collector, but before orders had been passed on it the Settlement Deputy Collector declared the plaintiffs to be sub-tenants cultivating *Sir* of the Zamindars. This order was not appealed, but the Zamindars appealed against the orders of the Assistant Collector. The Commissioner who took up both the cases together reversed the order of the Assistant Collector and upheld that of the Settlement Deputy Collector (*Mata Din* v. *Sahib Rai*, S. D. B. R. No. 14 of 1885). A suit for declaration that the plaintiffs were tenants at fixed-rates and not occupancy tenants is not cognizable by the Civil Court (*Sadik Ali* v. *Liakat Ali*, W. N., 1887, p. 214). When the nature of the tenure of a tenant has been determined by the Settlement Officer, his order becomes final, and no suit will lie in the Civil Court to disturb that decision (*Rup Singh* v. *Sukhdeo*, W. N., 1882, p. 111). The plaintiff was the mortgagee of some bighas of land from a tenant who, under the law, was entitled to mortgage his holding. When he attempted to take possession of the land under his mortgage, he was resisted by a third party who was in possession of about half of the land mortgaged. The plaintiff accordingly sued in a Civil Court for possession of half of the land by virtue of his right as mortgagee, and also for a declaration that the second defendant had nothing to do with the land. *Held*, that the suit was properly brought in a Civil Court, and that the Civil Court was competent to grant the plaintiff a decree for possession though it conld not grant him the declaration asked for (*Padarath* v. *Ram Ghulam*, I. L. R., 23 All., 481).

Suit by Joint Co-sharers :—In a joint undivided mahal co-sharer landholders must sue conjointly, unless they have appointed an agent to act on behalf of them all (sec. 194). An application under sec. 158 of the Bengal Tenancy Act, 1885, (corresponding to this section), cannot be made by one of several joint landlords. Section 188 of the Act (corresponding to sec. 194 of this Act) requires that such an application should be made by all the landlords acting together, and it is not sufficient compliance with its provisions to make the landlords, who refuse to join, parties to the proceedings under sec. 158 of that Act (*Moheeb Ali* v. *Ameer Rai*, I. L. R., 17 Cal., 538).

Clause (a) :—Under this clause a tenant may sue to have it declared that he is the tenant of a certain holding. But under the old law it was held that the Revenue Court was competent only to decide questions as to the class of a tenant, namely whether he was tenant of a particular class, and not as to whether he was a tenant at all. The latter point raised the question of title and the Revenue Court was not competent to decide that question (*Arjan* v. *Rattue*, W. N., 1886, p. 122). But this ruling is no longer applicable under the present law, because the provisions of sec. 10 of Act XII of 1881 were limited to the determination of the *class* of tenure of a tenant, and there was no provision in that section like that contained in the clause under note.

Clause (b) :—**'Class'** :—i. e., whether he is a permanent tenure-holder, or a fixed-rate tenant, or an ex-proprietary tenant, or an occupancy tenant, or a non-occupancy tenant.

Clause (c) :—

'Boundaries' :—In a proceeding under sec. 158 of the Bengal Tenancy Act (corresponding to this section) in which an enquiry had to be made as to the boundaries of the tenant's holding, the *Amin* took evidence as to the standard measure of the district. *Held* that this evidence had been rightly admitted and acted upon (*Deoki Singh* v. *Seogobind Sahoo*, I. L. R., 17 Calc., 277).

Clause (d) :—

'Rent payable' :—i. e., the amount of rent which the tenant is liable to pay, or, where rent is payable in kind, the quantity which the tenant is liable to pay. The words under note do not apply to cases where the liability or the non-liability of the tenant to pay rent is in question. In a proceeding under sec. 158 of the Bengal Tenancy Act (corresponding to this section) the Court has no jurisdiction to assess additional rent for excess lands found to be in the occupation of the tenant, its function being limited to recording the existing rent payable by the tenant at the time of the application (*Sri Narain Thakur* v. *Maharaja Sir Luchmeshwar Singh Bahadoor*, 6 C. W. N., 592), nor can the Court on such an application pass a decree for enhancement of rent (*Rajeswar Prasad Singh* v. *Barta Koer*, I. L. R., 21 Calc., 807), or a decree for abatement of rent. But where several plots of land are held by a tenant at a lump rent and some of those plots are taken away from the tenant he may sue under this section for the determination of the rent payable for the remaining plots. The Court cannot, under this section, commute money-rent into rent in kind, or rent in kind into money-rent.

Limitation, Jurisdiction, suit, appeal, review and revision :—There is no period of limitation for suits under this section. Suits under this section should be filed in the Court of the Assistant Collector

in charge of the Sub-division; provided that if there is no Assistant Collector in charge of the Sub-division, such suits should be filed in the Court of the Collector [Sec. 174 (*b*)]. Such suits may be disposed of by an Assistant Collector of the first class (Sec. 172) or by the Collector (Sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [Sec. 180 (1)] will lie to the Commissioner (Sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 53). A second appeal on any of the grounds specified in sec. 584 of the Code of Civil Procedure will lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against otherwise than as regards costs (Sec 181) within ninety days from the date of the decree appealed against (4th Schedule, Group E. Serial No. 54).

As to review vide secs. 183 and 184.

As to revision vide sec. 185.

Court Fee :—The Court fee payable on a plaint or memorandum of appeal will be eight annas (4th Schedule, Group C, Serial No. 34).

Right to written leases and counterparts.

96. (1) A non-occupancy tenant is entitled to receive a written lease from his landholder, and a landholder upon delivering or tendering to a non-occupancy tenant a lease consistent with the provisions of this Act is entitled to receive from him a counterpart thereof.

(2) It shall be sufficient if such lease or counterpart contains the particulars specified in section 95, and, in addition, the term for which the tenant is entitled to hold.

(3) Such lease or counterpart may be in the form given in the third schedule

(4) No omission in any such lease of any covenants or conditions, not inconsistent with any of the particulars above specified, shall prevent either of the parties thereto from claiming the benefit of such covenants or conditions.

This section corresponds to sec, 24 and 28 of Act XII of 1881.

'Non-occupancy tenant' :—Vide sec. 19 and notes thereunder, p. 68 *ante*. The Select Committee in their report printed at page 71 of the N.-W. P. & O. Gazette, dated 22nd June, 1901, say :—"It is only for the protection of the interests of non-occupancy tenants that a lease is necessary, and it is only such tenants who can be compelled to take a lease, for it is only in their case that the term of their occupation can be a matter of contract. Occupancy tenants are averse to accepting any form of lease, as such acceptance is regarded by them as suggesting that their rights are based on the lease and not on the statute. It is at the same time necessary to provide in the case of all classes of tenants, whether privileged or not, for disputes in respect of the matters that are referred to in clauses (*a*) to (*c*) of sec. 103 (of the original Bill), and this is done in the new section 99 A (corresponding to sec. 95).

Definition of lease :—Vide notes on 'Leases and their registration,' p. 21 *ante*.

Leases and their registration :—Vide under Sec. 4 (11), p. 21 *ante*. see also sec. 97 which provides for attestation in lieu of registration.

Leases held to require registration :—Vide under sec. 4 (11) at p. 22 *ante*.

Leases held not to require registration :—Vide under sec. 4 (11), at p. 23 *ante*.

Stamp duty on leases :—The proper stamp duty on leases is as follows (The Indian Stamp Act II of 1899, Schedule I, Art. 35).

Description of instrument.	Proper stamp duty.
Lease, including an under-lease or sub-lease and any agreement to let or sub let :—	
(*a*) Where, by such lease, the rent is fixed, and no premium is paid or delivered.—	
(i) Where the lease purports to be for a term of less than one year.	The same duty as a Bond for the whole amount payable or deliverable under such lease [*i.e.*, where the amount does not exceed Rs. 10, two annas : when such amount exceeds Rs. 10 but does not exceed Rs. 50, four annas : when such amount exceeds Rs. 50 but does not exceed Rs. 100 eight annas and for every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1000, eight annas and for every

Description of instrument.	Proper stamp duty.
	Rs. 500 or part thereof in excess of Rs. 1000, wo rupees eight anns.]
(ii) Where the lease purports to be for a term of not less than one year, but not more than three years :	The same duty as a Bond (vide above) for the amount or value of the average annual rent reserved.
(iii) Where the lease purports to be for a term in excess of three years :	The same duty as a Conveyance for a consideration equal to the amount or value of the average annual rent reserved [*i.e.* where the amount or value of the consideration as set forth therein does not exceed Rs. 50, eight annas ; where it exceeds Rs. 50 but does not exceed Rs. 100, one Rupee ; for every Rs. 100 or part thereof in excess of Rs. 100 up to Rs. 1000, one rupee ; and for every Rs. 500 or part thereof in excess of Rs. 1000, five rupees.
(iv) Where the lease does not purport to be for any definite term :	The same duty as a conveyance (see above) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(v) Where the lease purports to be in perpetuity :	The same duty as a conveyance (see above) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(*b*) Where the lease is granted for a fine or premium or for money advanced, and where no rent is reserved.	The same duty as a conveyance (see above) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.
(*c*) Where the lease is granted for a fine or premium or for money advanced in addition to rent reserved :	The same duty as a Conveyance (vide above) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered: Provided that, in any case when an agree-

Description of instrument.	Proper stamp duty.
	ment to lease is stamped with the ad valorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.

By a document purporting to be a lease, certain land was leased for four years at a rent of Rs. 15 per annum. Out of the total rent it was stipulated that Rs. 50 should be paid in advance and the balance Rs. 10 at the end of the term. *Held*, that the payment of Rs. 50 in advance was not payment of a premium or fine within the meaning of Article 39 (*c*) of the Indian Stamp Act, 1879—By a document purporting to be a rent agreement, the lessee took a shop for five years, agreeing to pay Rs. 30 per annum as rent, depositing one year's rent with the lessor, which was to be credited to the rent of the last year of the term. *Held*, that the deposit of one year's rent with the lessor was not a fine or premium within the meaning of Article 39 (*c*) of the Indian Stamp Act, 1879— By a document purporting to be an instrument of mortgage, the owner of certain land, being indebted in a certain sum, conveyed the land to his creditor for nine years in liquidation of the principal and interest of the debt. The creditor was to take the produce of the land, enjoy the profits or suffer the loss, and pay Rs. 35 per annum as rent. *Held*, that the document was a lease with a premium liable to duty under Article 39 (*d*) of Schedule I of the Indian Stamp Act, 1879 (*Stamp Refrence of the Board of Revenue*, I. L. R., 7 Mad., 203.)

Stamp duty by whom payable :—In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne, in the case of a lease or agreement to lease, by the lessee or intended lessee [sec. 29 (*c*) of the Indian Stamp Act II of 1899].

Kind of stamp to be used :—An impressed sheet must ordinarily be used. But impressed labels affixed by the Commissioner of Stamps may be used for leases and counterparts printed or lithographed in an oriental language, when the written matter filled in does not exceed ¼th of the printed matter ; or for leases and counterparts, when written in any European language with an English translation, if not in English. (Govt. Notification, Finance, 2170 of 22nd May 1891, paras 6, 9 and 10).

Leases exempted from stamp duty :—Article 35, schedule I of the Indian Stamp Act II of 1899 exempts from duty leases executed in the case of a cultivator, and for the purposes of cultivation without the payment or delivery of any fine or premium, when a definite term is ex-

pressed, and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.

By the term 'cultivator' in the above article, only those persons are connoted who actually cultivate the soil themselves or who cultivate it by members of their household, or by their servants, or by hired labour and with their own or hired stock. The class of husbandmen or actual agriculturists is meant ; not farmers middle men, or lessees, even though cultivation may be carried on to some extent by such persons in the area covered by their lease, (*Stamp Reference I. L. R. 5 All., 360* ; *Narayan Ramchandra* v. *Dhondu Raghu*, *I.L R., 10 Bom., 173*). Clause (*b*), Article 13 of Schedule II of Act I of 1879 (corresponding to Art. 35, Schedule I of Act II of 1899) exempts all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one, and also whatever the term may be, provided the annual rent reserved does not exceed Rs. 100 (In re *Bhavan Bahadur*, I. L. R. 6 Bom., 691). After a complete lease has been executed, stamped and registered, if another document is prepared and executed with a view to alter the first and substitute new terms so far as the rent is concerned, it requires, to be itself stamped with the stamp provided for a lease, and is not exempted from stamp duty (*Byjnath Dutt Jha* v. *Mussamut Putsohee Dobain*, 20 W. R., 36).

Who may give leases :—Every person competent to contract, and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to give a lease of such property (Act IV of 1882, sec 7). Though a minor is not competent to contract (sec. 11 of Act IX of 1872) but a lease given by him is not void, but merely voidable at the option of the minor (*Soshi Bhusan Dutt* v. *Jadu Nath Dutt*, I. L. R., 11 Cal., 552 ; *Mahamed Arif* v. *Saraswati Debya*, I. L. R. 18 Calc., 259 ; *Sadashiv Vaman Dhamankar* v. *Trimbak Divakar Karundikar*, I. L. R., 23 Bomb., 146 ; *Madan Mohan* v. *Rangi Lal*, I. L. R., 23 All., 288). Where minors, after coming of age, receive rents under a lease which was granted by their guardians during their minority, they thereby ratify the lease, and cannot afterwards repudiate it (*Ram Chunder Sircar* v. *Pran Gobind Boishnub*, 25 W. R., 71). A valid lease cannot be granted by a person not in possession of the lands leased (*Tiery* v. *Kristo Mohun Bose*, L. R., 1 I. A., 76). A lease given by a lessor cannot have effect beyond the interest of the grantor, and consequently a person cannot give lease beyond his own interest (*Hurish Chunder Roy Chowdhry* v. *Sree Kalee Mookerjee*, 22 W. R., 274 ; *Bulakee Lall* v. *Mussamut Indurputtee Kowar*, 3 W. R., 41 ; *Ooma Tara Debia* v. *Peena Bibee*, 2 W. R., 155 ; *Khoshal Mahomed* v. *Joynooddeen*, 12 W. R., 451 ; *Shoorut*

Soondary Dabea v. *Charles Binny*, 25 W. R., 347 ; *Dumlee Shaikh* v. *Bissessur Lall*, 13 W. R., 291.) A lease granted by a childless Hindu widow is valid, and enures for the life of the widow (*Mohun Koowur* v. *Zorranun Singh*, Marshall's Reports, 166 ; 1 Hay's Reports, 372). A widow in possession of her widow's estate in a Zemindari made a grant of a *putni* tenure under it to a lessee at a rent. In a suit brought by the reversionery heir, on her death, with the object of having the grant set aside as invalid as against him, the *putni* lease was not proved to have been made with authority or from ncessity justifying the alienation by the widow. *Held*, that the *putni* lease was, on the death of the widow, only voidable, and not of itself void ; so that the plaintiff, the next inheritor of the Zemindari, might then elect to treat it as valid (*Modhu Sudan Singh* v. *E. G. Rooke*, I. L. R., 25 Calc., 1 ; 1 C. W. N., 433 ; L. R., 24 I. A., 164). Mr. Field in his Digest observes :—"A lease of the lessor's interest and of something in excess is void as to the excess merely and is valid to the extent of the lessor's interest ; provided that, if the lessor acquire such excess after the execution of the lease, such lease is valid as against him for such excess also."—A Government farmer of a village (the farm being for his life) sub-leased it, and the sub-lessee, in consideration of a certain sum, made a perpetual lease in favour of the defendant at a certain annual quit-rent. Subsequently the proprietary settlement of the village (the possession being conditional on expiry of farm) was made with the sub-lessee whose proprietary rights having been sold at auction were purchased by the plaintiff, who sued to set aside the lease. *Held*, on the construction of the lease, that the proprietor professed it to be a perpetual lease, without reference to its determination on the expiry of the sub-lease, and that the auction-purchaser, being the *locum tenens* of the person whose rights he purchased, was estopped, as would have been the latter, from questioning the validity of the lease in favour of the defendant, (*Kurn Chowbey* v. *Jankee Persad*, 1 Agra, 164, see also *Syud Ameer Ali* v. *Heera Singh*, 20 W.R., 291), Where a person contracts to let certain property, having only an imperfect title thereto, if the lessor has, subsequently to the lease, acquired any interest in the property, the lessee may compell him to make good the contract out of such interest (sec. 18 of the Specific Relief Act I of 1877). The interest when it accrues feeds the estoppel. See also sec. 115 of the Indian Evidence Act. It does not lie within the ordinary scope of a naib's authority to grant leases ; special authority to grant them is necessary (*Ooma Tara Debia* v. *Peena Bibee*, 2 W. R., 155 ; *Kalee Koomar Dass* v. *Sheikh Anees*, 3 W. R., Act. X, 1). The grant of a *mokururee* lease is beyond the scope of a naib's general authority. To enable him to give such a lease his principal's special consent or approval is neces-

sary, (*Unnoda Pershad Banerjee* v. *Chunder Sekhur Deb*, 7 W. R., 394). The extent and nature of the powers vested in an agent are not so much a matter of law as a matter of fact to be decided in each case in which a question of agency arises (*Ram Buksh Lall*, v. *Kishoree Mohun Shaha*, 12 W. R., 130). It does not fall within the ordinary scope of the duties of a naib to grant Pattas for fiixed rents. It is requisite in such cases that express authority should be proved to make the grants valid, (*Goluckmonee Debia* v. *Assimooddeen*, I. W. R.. 56). The agent of a lessor was held to have no power to grant a lease containing stipulation that the lessee was to receive from the lessor the expenses which he might incur in any litigation which might take place wtih third parties respecting the land leased, (*K. J. Kenny* v. *Mookta Soonderee Dabee*, 7 W. R., 419). Leases by agents in excess of their authority may however be ratified by their principals, (sec. 196 of Act IX of 1872). A person appointed or declared by the court, under Act VIII of 1890, to be guardian of the property of a ward cannot, without the previous permission of the court, lease any part of that property for a term exceeding five years, or for any term extending more than one year beyond the date on which the ward will cease to be a minor (sec. 29 of Act VIII of 1890). A lease by a guardian in contravention of the above provisions is voidable at the instace of any other person affected thereby (sec. 30 of Act VIII of 1890). A manager of the estate of a lunatic, appointed under Act XXXV of 1858, cannot grant lease of any immoveable property of the lunatic for any period exceeding five years without an order of the Civil Court previously obtained (sec. 14 of Act XXXV of 1858). Except with the permission of a principal Civil Court of original jurisdiction, no trustee can lease trust property for a term exceeding twenty-one years from the date of executing the lease (sec. 36 of Act II of 1882). The Court appointing a receiver of any property may grant to such receiver power of letting such property for such time as the Court thinks fit (sec. 503 of the Code of Civil Procedure). When the settlement of any land has been annulled under sec. 153 of the N. W. P. and Oudh Revenue Act, the Collector may, with the previous sanction of the Commissioner, let it in farm for such term and on such conditions as may be sanctioned by the Commissioner. Provided that no land may be so let for a term exceeding fifteen years from the first day of July next after the date of such annulment (sec. 154 of the N. W. P. and Oudh Land Revenue Act III of 1901).

In joint undivided mahals in which there are two or more cosharers all should join in letting the tenant into possession of any part of the undivided mahal, unless they have appointed an agent to act on behalf of them all [sec 194 (1)]. One or more cosharers cannot allow a stranger to occupy a portion of the Mouza without the consent of the other co-

sharers, unless they are authorised to act on behalf of the other cosharers (*Lutchmun Pershad* v. *Dabee Deen*, 3 Agra, 264).

A manager appointed by the Court of wards may, subject to the control of the Court of Wards, grant and renew leases and farms, not being for a longer period than seven years (sec. 27 of the N. W. P and Oudh Court of Wards Act III of 1899).

As to sub-leases vide secs- 23 to 30 of this Act.

Obligation of landholder to give and maintain tenant in peaceable possession :—Under sec. 108 (b) of the Transfer of Property Act "the lessor is bound to put the lessee in possession of the property. The benefit of such guarantee for putting the lessee in possession of the property shall be annexed to, and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested." Though the provisions of the Transfer of Property Act regarding leases do not apply to leases for agricultural purposes, but the general principles laid down in those provisions may govern agricultural leases also.—In every agreement to lease land, there is an implied contract that the lessor will give peaceable possession of the land leased to the lessee (*Munee Dutt Singh* v. *William Campbell*, 11 W. R., 278). When a landholder gives a lease, a lessor enters into an implied contract to give his lessee peaceable possession of the land which is the subject of the lease (*Muni Dutt Singh* v. *William Campbell*, 12 W. R., 149). Where a suit is brought for a *Kabuliat* the main question is whether, as a matter of fact, the plaintiff can establish that he, or some person from whom he derives title, put the defendant into possession of all the lands in respect of which the *Kabuliat* is demanded (*Radhanath Chowdhry* v. *Joy Soonder Moytra*, 2 C. L. R., 302). The right of a landlord to receive rent from a farmer depends upon his securing to the latter quiet possession and giving him proper and lawful means of realizing rents from the tenants (*Kristo Soonder Sandayal* v. *Koomar Chunder Nath Ray*, 15 W R., 230). A landlord cannot claim rent under a *Kabuliat* where the lessee has never obtained possession, delivery of possession being ordinarily a condition necessary for the maintenance of an action for rent (*Hurish Chunder Koondoo* v. *Mohince-Mohun Mitter*, 9 W. R., 582 ; *Bullen* v. *Lalit jha*, 3 B. L. R., Ap. 119). If the landholder dispossesses the tenant he is not entitled to claim rent (*Kadumbinee Dossia* v. *Kasheenath Biswas*, 13 W. R., 338 ; *GobindChand Juttee* v. *Mun Mohun Jha*, 14 W. R., 43 ; *Hoymbutty Dossee* v. *Sreekishen Nundee*, 14 W. R., 58). When a Zemindar gives a lease, the presumption is that he is in a position to give possession of the property leased. After the execution of the *kabuliat* strong evidence is requisite to show that possession was not given to the party executing it (*Douzelli* v. *Rajah*

Tek Narain Singh, 2 W. R., Act X, 102). In a suit to recover arrears of rent under a *kabuliat* the defendant, who had paid rent for upwards of four or five years, pleaded that he had obtained possession of a portion only of the lands demised. *Held*, onus of proving this plea was upon the defendant (*Bani Madhub Mookerjee* v. *Sridhur Deb Ghuttack*, 10 C. L. R., 555). An agreement to grant a lease cannot be said to create an interest in immoveable property, nor can a suit upon it be said to be one for the recovery of such property or of an interest in it (*Lala Ram Sahoy Lal* v. *Bibee Chowbain*, 22 W. R. 287). But a lessor failing to perform his contract may be sued, at the pleasure of the lessee, either for specific performance or for damages or for both (secs. 12 and 19 of the Specific Relief Act I of 1877; *Munee Dutt Singh* v. *William Campbell*, 12 W. R, 149). A party who took from certain proprietors of an estate a lease of their interest therein without advance or preminm, not having been put in possession, and finding another party in possession with an adverse title, commenced a suit against him, which was unsuccessful. He then sued the lessors and their representatives for damages to recover the expenses of the litigation and the whole of the profits he had expected from the lease. *Held*, that the plaintiff had no right to recover from the lessors the expenses of the litigation; and, as it was not contended that the lessors had wilfully misrepresented things, he was entitled only to nominal damages (*Mohomed Esa Khan* v. *Baboo Keshab Lall*, 14 W. R, 382). A suit will lie for damages sustained by a lessee by his lessor's breach of contract to put him in possession of a portion of the property of which he granted the lease (*Fireenge Sing* v. *Shah Ahmed Hossein*, 7 W. R., 22). Plaintiff having sued for arrears of rent payable under a Kabuliat in respect of a share of four villages, the defendant pleaded that he had been put in possession of one only of the four leased to him, and that, therefore he was not liable to the whole claim. Parol evidence was admitted to show that, at the time the Kabuliat was granted, it had been agreed between the plaintiff and defendant the title of the former being under dispute, that the whole rent payble under the Kabuliat should be payable in respect of such of the villages as should actually come into defendant's possession. *Held* that such parol evidence was rightly admitted there being no stipulation in the lease that the defendent should only pay rent on being put completely into possession; and that although payment of rent is not ordinarily enforced unless the lessor puts the lessee into possession it was quite competent to the parties to waive such privilege (*Ram Kishore Lall* v. *Nund Ram*, 4 C. L. R., 100). D, after having given a Katkina pottah of a certain village to M, granted another Katkina pottah of the same land to R, who obtained possession under his pottah.

M then sued D and K for ejectment and to recover possession *Held*, that M's remedy lay in an action for damages, and that he could not claim specific performance unless R raised no objection to giving up possession, (*Bujrungee Dutt Pattuck* v. *Shaikh Moorad Ali*, 22 W. R. 7). A lessee whose lessors have never been in possession of the lands comprised in the lease, has a right to bring an action to establish the title of his lessors (*Prankisto Dey* v. *Bissumbhur Sein*, 11 W. R., 80). When a landlord leases only portion of land without any further stipulation with regard to the title, he does thereby impliedly undertake that he has sufficient title to support the lease, and he guarantees the tenant quiet possession and enjoyment. Where, therefore, a tenant is evicted under the paramount title of a third party from a part of his tenure, he is entitled to abatement of rent, (*Brojonath Paul* v. *Heera Lall Paul*, 10 W. R., 120 ; *Gopanand Jha* v. *Lalla Gobind Pershad*, 12 W. R., 109). In the absence of any agreement to the contrary a landlord is under the implied obligation to indemnify his tenant against ouster or disturbance of possession by his own act, or by the acts of those who claim under him, or have a right paramount to his, but not against the wrongful acts of third parties (*Benjamin Douzelle* v. *Girdharee Singh*, 23 W. R., 121 ; *Rung Lall Singh* v. *Lalla Roodur Pershad*, 17 W. R., 386). In a suit by a landlord to recover arrears of rent from tenants who had been forcibly compelled, by the superior holders of a tenure over the plaintiff, to execute Kabuliat to themselves and to pay rent accordingly, it was held that such wrongful act of the intervenor defendants (the superior holders) was not, in law, sufficient to constitute an ouster of the plaintiff, but gave the tenant-defendants a cause of action against them for damages (*Chunder Nath Bhuttacharjee* v. *Juggut Chunder Bhuttacharjee*, 22 W. R., 337). When the act of a landlord is not a mere trespass, but something of a graver character, interfering substantially with the enjoyment, by the tenant, of the demised property, the tenant is entitled to a suspension of rent during such interference, even though there may not be actual eviction. If such interference be committed in respect of even a portion of the property there should be no apportionment of rent where the whole rent is equally chargeable upon every part of land demised. But if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed, there should be apportionment (*Dhunput Singh* v. *Mahomed Kazim Ispaham*, I. L. R.. 24 Calc., 296). A lessor is not entitled to claim rent from the lessee for the period during which, he wilfully disturbs the lessee's quiet possession. The law does not require that there should be a complete eviction of the lessee in order that he may be exempted from liability to pay rent (*Lalita Sundari* v, *Sarnamayi Dasi*, 5 C. W. N., 353). A landlord is not entitled to recover rent

for the lands in the possession of a tenant, who holds a tenure under a lease which reserves rent at a certain rate per bigha, when he has dispossessed the tenant from the other lands of the tenure, in as much as it cannot be said that each bigha of land is separtely assessed and separately chargeable with rent (*Harro Kumari Chowdhrani* v. *Purna Chundra Sarbogya*, I. L. R., 28 Calc., 188).

Leases : how made :—A lease granted to a tenant need not in all cases be in writing. Parol leases are in most cases valid. A lease chargeable with duty cannot be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence nor can it be acted upon, registered, or authenticated by any such person or by any public officer, unless such instrument is duly stamped (sec. 35 of the Indian Stamp Act II of 1899). Nor can a lease the registration of which is compulsory, affect any property comprised therein, or be received in evidence unless it has been registered in accordance with the Indian Registration Act (sec. 49 of Act III of 1877) or attested under sec. 97 of this Act.—When a lease has been admitted in evidence it cannot be called in question at any stage of the same suit or proceeding on the ground that the lease has not been duly stamped (sec. 36 of Act II of 1899). The fact that a patta on which a plaintiff's title is based has not been registered, and therefore cannot be used by reason of the registration law is not a good ground on which a Court would be justified in admitting secondary evidence (*Crowdie* v. *Kullar Chowdhry*, 21 W. R., 307; *Mussamut Kaboolun* v. *Shumshier Ali*, 11 W. R. 16). Where the terms of agreement to lease have been reduced to writing and the instrument is inadmissible in evidence through neglect to register, secondary evidence of its contents may not be given (*Ajudhia Parshad* v. *Bhagwan Din* 2 L. R., R. R. S. 31; *Kinlock* v. *Thakur Dass*, S. D. B. R. No. 13 of 1885) An unregistered document is not inadmissible in evidence if it was executed at a time when the law did not require registration (*Sheo Ram Singh* v. *Sewak Ram*, 20 W, R., 83) **Oral agreement varying terms of lease** :—When the terms of a lease required by law to be reduced to the form of a document have been proved under Sec. 91 of the Indian Evidence Act no evidence of any oral agreement or statement can be admitted as between the parties to any such lease or their representatives in interest for the purpose of contradicting, varying, adding to, or substracting from its terms, except in the cases provided for in Sec. 92 of the Indian Evidence Act (Sec. 92 of Act I of 1872). Plaintifl having sued for arreas of rent payable under a Kabuliat in respect of a share of four villages, the defendant pleaded that he had been put in possession of one only of the four leased to him and that, therefore he was not liable to the whole claim. Parol evidence

was admitted to show that at the time the Kabuliat was granted, it had been agreed between the plaintiff and defendant, the title of the former being under dispute, that the whole rent payable under the Kabuliat should be payable in respect of such of the villages as should actually come into defendant's possession. *Held*, that such parol evidence was rightly admitted, there being no stipulation in the lease that the defendant should only pay rent on being put completely into possession (*Ram Kishore Lall* v. *Nund Ram*, 4 C. L R., 100). A registered lease, renewable at the former rent, at the expiration of the period fixed thereby, having been granted, it appeared that the lessors were entitled to a 6 annas share only, instead of to the whole property leased. It was alleged by the lessee that it was then verbally arranged that the rent should be reduced in proportion, and the lessee in fact did pay the rent during the term in proportion to the interest of the lessors. On the expiration of the term he sued for specific performance of the contract, as modified, for a renewal of the lease of the 6 annas. Held that evidence of the parol variation of the contract was not admissible under Sec. 92 (4) of the evidence Act (*Dwarka Nath Chattopadhya* v. *Bhogoban Panda*, 7 C. L. R., 577). Plaintiff sued to recover rent under a Kabuliat. The defendant admitted execution of the Kabuliat, but asserted that he executed it in order to enable the plaintiff to sell the land at a high price, the plaintiff agreeing to make over to him Rs. 282 out of the purchase money, and to obtain for him from the purchaser a mouroosi *patta* of the land, it never having been intended that any rent should be payable under the *Kabuliat*. *Held*, that evidence of the oral agreement was admissible for the purpose of proving the fraudulent character of the transaction between the parties (*Kashi Nath Chukerbati* v. *Brindabun Chuckerbutty*, I. L. R., 10 Calc., 649).

Form of lease :—See the third Schedule to this Act.

Commencement of leases :—Under Sec. 110 of the Transfer of Propery Act where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day will be excluded. But where no period of commencement is named, the time so limited will begin to run from the first day of July next after the date of the lease.

Duration of leases :—In the absence of an agreement to the contrary, agricultural leases end with the agricultural year. But a landholder may bring a suit for the ejectment of his tenant before the tenancy has actually determined, the actual ejectment taking effect however after the determination of the lease (*Deoki Nandan* v. *Salig Ram*, S. D. B. R., No. 11 of 1891 ; *Rao Karan Singh* v. *Khubee Singh*, 1 L. R., R. R. S., 159).

Determination of leases :—Under Sec. 111 of the Transfer of Property Act, a lease of immoveable property determines :—

(*a*) by efflux of the time limited thereby :

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event :

(*c*) Where the interest of the lessor in the property terminates on or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right :

(*e* by express surrender ; that is to say, in case the lessee yields up his interest under the lease to the lessor by mutual agreement between them :

(*f*) by implied surrender :

(*g*) by forfeiture ; that is to say (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void ; or (2) in case the lessee renounces his character as such by setting up a title in third person, or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease :

(*h*) On the expiration of a notice to determine the lease, or to quit or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f) :

Illustration.

A lessee accepts from his lessor a new lease of the property leased to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Clause (a) :

Efflux of time :—Where there is nothing to show on what tenure a tenant holds from his landlord, the presumption is that he is a tenant from year to year (*Endar Lala* v. *Lalu Huri*, 7 Bombay High Court Reports, A. C., 111 ; *Goordial* v. *Ramdut*, Agra, F. B., 15). A tenancy which is to continue year by year is a continuing tenancy so long as the parties are satisfied ; and though terminable at the option of either party at the end of any year, is not *ipso facto* terminated at the end of every year (*Maloddee Noshyo* v. *Bullubee Kant Dhur*, 13 W. R., 190). Where a lease is only for one year with the option to the lessor to allow the lessee to continue his tenure on the old conditions after expiration of the

year, it was held that the lease is one year's lease and not one from year to year (*Southo Pursad Dass* v. *Parasu Padhan*, 26 W. R., 98). A lease for so long as the lessee continues to pay the stipulated rent is a lease not limited to a year (*Sheogholam* v. *Buddree Nath*, 4 N. W. P., 36). Where the form of a *patta* is expressed by the words *san-ba-san*, a year by year tenancy is meant, that is, a tenancy which is certain for the period of one year and will continue beyond that period until it is properly put an end to by either party (*Ram Coomar Mundul* v. *Brojohuree Mirdha*, 10 W. R, 410 ; 2 B. L. R., A. C., 75). A patta for one Fasli year to remain in force until another patta is granted is a lease for a term exceeding one year and not a lease for a year (*Venkatachellam Chetti* v. *Audian*, I. L. R, 3 Madras, 358). A kabuliat in which a rayat agreed to hold land under a patta for a specific year, the agreement between the parties being that at the close of that period a fresh settlement would be made, was held to be a lease for one year (*Jugdish Chunder Biswas* v. *Abedollah Mundal*, 14 W. R., 68). A lease for one year, containing an option of renewal for a further period of one year, is not a lease for a term exceeding one year (*Boyd* v. *Kreig*, I. L. R., 17 Cal., 548). A lease for one year certain, containing an expression, on the tenant's part of readiness to hold the land longer at the same rent if the landlord should desire it, is a lease for a term not exceeding one year (*Apu Budgavada* v. *Narhari Annajee*, I. L. R., Bombay, 21 ; *Jugjivandas Jawaherdas* v. *Narayan Lakshman Patil*, I. L. R., 8 Bombay, 493 ; *Southo Pursad Dass* v. *Rughoo Padhan*, 26 W. R., 98). When no term is mentioned in lease, it may either be a tenancy terminable at the end of every year, or one for the life of the tenant, according to the terms of the lease (*Watson* v. *Dost Mahomed Khan*, 2 Hay's Reports IV). In the absence of words to the contrary, a lease of Zamindari rights for a term of years does not terminate before the expiration of the term by the mere fact of the death of either the lessor or lessee (*Badrinath* v. *Bhajan Lal*, I. L. R., 5 All., 191 ; *Tej Chand* v. *Sree Kanth Ghose*, 6 W. R., P. C., 48 ; 3 M. I. A., 261). A lease of land, whereby the lessee is given the power of holding the land as long as he pleases, is determined by the death of the lessee (*Vaman Shripad* v. *Maki*, I. L. R., 4 Bombay, 424). But any lease-hold estate, when not expressly limited to the life of the lessee, passes to his heirs in the same way as other property (*Danoollah* v. *Amanutoollah*, 16 W. R., 147 ; *Radha Kishore Roy* v. *Sitloo Sirdar*, 24 W. R., 172).

Clause (b)

Conditional on a contingency:—A lease of land, whereby the lessee is given the power of holding the land as long as he pleases, is determined by the death of the lessee (*Vaman Shripad* v. *Maki*, I. L. R., 4 Bombay, 424). But any lease-hold estate, when not expressly limited

to the life of the lessee, passes to his heirs in the same way as other property (*Danoollah* v. *Amanutullah*, 16 W. R., 147 ; *Radha Kishore Roy* v. *Sitloo Sirdar*, 24 W. R., 172). In order to determine the question whether a pattah granted by a Zemindar conveyed an estate for life only or an estate of inheritance, it was held that it was necessary to arrive as well as could be done at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution (*Robert Watson & Co.* v. *Mohesh Narain Roy*, 24 W. R., 176). Where proof exists of long uninterrupted enjoyment of a tenure, accompanied by a recognition of its hereditary and transferable character, although the patta contains no words of inheritance it is sufficient to supply the want of the words 'from generation to generation" in the patta, and the tenant cannot be dispossessed by his superior (*Dhunput Singh* v. *Goomun Singh*, 11 M. I. A., 433 ; 9 W. R., P. C., 3). Where by an old patta, lands forming part of a zamindari had been leased at a specified rent, but there were no words in the patta importing the hereditary and *istamrari* character of the tenure, it was held that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son, whence that hereditary and istamrari character might be legally presumed (*Satya Sarn Ghosal* v. *Mahesh Chandra Mittra*, 12 M. I. A., 63; 11 W. R., P. C., 10 : 2 B. L. R., P. C., 23 ; *Deen Dyal Singh* v. *Heera Singh*, 2 N. W. P., 338 ; *Nubo Doorga Dossia* v. *Dwarka Nath Roy*, 24 W. R., 301). In an instrument described as a perpetual lease, the lessor covenanted as follows :—"So long as the rent is paid, I shall have no power to resume the land. The lessees shall have no power to sell the land in any way. I have therefore executed these few words by way of a perpetual lease, that it may be used when needed." Upon the death of one of the lessees his heir, who was in possession of the land which formed the subject of the lease, claimed to be the lessee of a moiety thereof on the ground that the lease was one creating a heritable interest. The claim was allowed by the Settlement Officer, and the lessor thereupon brought a suit to have it declared that he was entitled to eject the defendant under sec. 36 of Act XII of 1881, as being a tenant-at-will. *Held* that the mere use of the word "istamrari" in the instrument did not *ex vi termini* make the instrument such as to create an estate of inheritance in the lessee ; that the words "so long as the rent is paid I shall have no power to resume the land" did not show any meaning or intention that the lease was to be in perpetuity ; and that the defendant could not resist the plaintiff's claim (*Gaya Jati* v. *Ramjiawan Ram*, I. L.R., 8 All., 569 ; W. N., 1886, p. 227). The words

'istamarri mokurari' in patta granting land do not of themselves denote that the estate granted is an estate of inheritance. Not that such an estate cannot be so granted unless, in addition to the above words, such expressions as "*ba-farzundan*" or "*naslan bad naslan*" or similar terms are used. Without the latter, the other terms of instrument, the circumstances under which it has been made, or the conduct of the parties, may show the intention with sufficient certainty to enable the Courts to prononuce the grant to be prepetual ; the above words not being inconsistent therewith, though not themselves importing it. *Held* accordingly that where the words "mokarari" "istamrari" were used in connection with a grant in a patta, that the question was whether the intention of the parties that the grant should be perpetual had, or had not, been shown with sufficient certainty in any other way,—e. g, by the other terms, by the objects or circumstances of the grant, or by the acts of the parties (*Tulshi Pershad Singh* v. *Ramnarain Singh*, I. L. R., 12 Calc., 117 ; L. R., 12 I. A., 205). When a lease is given for a particular purpose and the tenant ceases to use the land for that purpose, the tenancy terminates, and however long he may have been in occupation of the land he has no right to hold it permanently (*Secretary of State for India in Council* v. *Luchmeswar Singh*, I. L. R., 16 Calc., 223). So where a lease is given for planting a grove, the tenant has a right to hold the land as long as the trees stand on the land ; but when the trees are cut down or become decayed the tenancy terminates and the land reverts to the Zemindar, unless the tenant has a right, by custom or by contract, to replant the land with fresh trees. The presumption is that a tenant of grove land has a right to renew the plantation by planting fresh trees as the old ones die out or are cleared away (*Ram Sahai* v. *Agar Singh*, W. N., 1882, p. 10 ; *Azmatullah Khan* v. *Mangni Ram*, W. N., 1886, p. 138). But the question whether tenants have a right to keep up or renew existing goves by planting new trees without the consent of the Zemindar must be determined with reference to the custom of the country (*Jhona Singh* v. *Neaz Begum*, 2 Agra Part II. p. 183). When the tenant has a right to replant trees, he is at liberty to exercise that right so long as he continues to hold the land on the old condition and footing, and so long as he has not put it to any use other than that of a grove, though a period of about a year had elapsed from the time when the trees in the grove were cut down or became decayed. (*Azmatullah Khan* v. *Mangni Ram*, W. N., 1886, p. 138). Trees accede to the soil and pass to the landholder on the termination of a tenancy, and unless the tenant uses, during the term of his tenancy, his privilege, where he has it, of removing the trees, he cannot do so afterwards ; he would then be deemed a trespasser. With the ejectment of a tenant in execution of a decree for

arrears of rent from his holding, all right in the trees standing on such holding or power of dealing with them also terminates. A person, therefore, who purchases the rights and interests of a tenant after his ejectment in the execution of such a decree, cannot maintain a suit for the possession of the trees standing on the tenant's holding (*Ram Baran Ram* v. *Salig Ram Singh*, I. L. R., 2 All., 896). Some older trees in a grove were destroyed and the tenant brought the land on which they had existed into cultivation. It was held that his act operated to create a right of re-entry on so much of the land in favour of the landholder (*Amir Singh* v. *Moazzum Ali Khan*, 7 N. W. P., 58).

Where land is held rent free for the performance of some specific service, religious or secular, which the proprietor no longer requires, it is liable to resumption within twelve years from the date on which the proprietor gives a notice in writing to the grantee that the service is no longer required (sec. 154).

Where in a lease it is stipulated that on the lessee's failing to pay any instalment of the rent, the plaintiff might appoint a *Sazawal* to collect direct from under-tenants, it was held that the appointment of such a *Sazawal* did not determine the defendant's lease (*Fakiruddin Mahomed Ahsan* v. *Phillips*, 3 Ap. 53 ; 11 W. R., 464 ; *Omrit Nath Tewaree* v. *Buggoo Singh*, W. R., 1864, 269).

Clause (c).

Where limited by lessor's interest &c :—If the lessor's interest is terminable on his death, the lessee's interest cannot enure beyond that period. A lease granted by a childless Hindu widow is valid and enures for the life of the widow (*Mohun Koowur* v. *Zorramun Singh*, Marshall's Report, 166 ; 1 Hay's Reports, 372). A widow in possession of her widow's estate in a Zamindari made a grant of a *putni* tenure under it to a lessee at a rent. In a suit brought by the reversionary heir on her death with the object of having the grant set aside as invalid as against him, the *putni* lease was not proved to have been made with authority or from necessity justifying the alienation by the widow. *Held*, that the *putni* was, on the death of the widow, only voidable, and not of itself void ; so that the plaintiff, the next inheritor of the Zamindari might then elect to treat it as valid (*Modhu Sudan Singh* v. *E. G. Rooke*, I. L. R.. 25 Calc, 1 ; 1 C. W. N., 433 ; L. R., 24 I. A., 164). A grantor cannot transfer a larger estate than he himself has in the property, hence where a life-tenant gives a perpetual lease and he and his heirs accept rent on the understanding that the lease was permanent, it does thereby preclude the claim for legal rights, which no admissions made on the part of the grantors are sufficient to negative (*Beni Pershad* v. *Dudhnath*, I. L. R. 27 Calc., 156). A mortgagee from a lessee must deliver up the property

on determination of the lease. A lease granted by an *ijaradar* is not good beyond the term of the ijara (*Ooma Tara Debia* v. *Peena Bibee*, 2 W. R., 155). A lease given by a lessor cannot have effect beyond the interests of the grantor (*Bulakee Lal* v. *Mussamut Indurputtee Kowar*, 3 W. R., 41 ; *Khoshal Mahomed* v. *Joynooddeen*, 12 W. R., 451 ; *Hurish Chunder Roy Chowdhry* v. *Sree Kalee Mookerjee*, 22 W. R., 274).

Clause (d) :

Merger of the interest of lessor and lessee :—The principle of merger is that the same person cannot be both landlord and tenant of the same land at the same time—*nemo potest esse tenenance et dominus* (*Mitturjeet Singh* v. *Fitzpatrick*, 11 W. R., 206 ; *Bool Chand Jha* v. *Luthoo Moodee*, 23 W. R., 387). Mr. Gour in his "Transfer of Property in British India" says :—"In order to create a case for merger, there must, however, be the union of the two interests in the lessee at the same time and in the same right. Hence where the lessee acquires the lessor's interest through the intervention of a trustee, there can be no merger, since the two rights are not vested in the same person (*Belaney* v. *Belaney*, Law, Reports, 2 Chancery Division, 138 ; *Lord Dynevor* v. *Tennant*, Law Reports 13 Appeal Cases, 279). And, similarly, if part of the lessor's interest is acquired by purchase, and the remainder by succession, there cannot be merger, since the whole interest has been acquired not in the same but in different rights"—A particular estate will merge in a reversion of a shorter duration than itself ; as if one be lessee for twenty years , and the reversion expectant thereon be granted to another for one year who grants it to the lessee, it will operate as a merger of the twenty years' term, and the term for one year will begin to run. (Woodfall, Landlord and Tenant, 16th Editon, page 326). The right of occupancy is a right given to a rayat continuing only so long as the rayat pays rent for the land he holds and though it cannot be affected by a wrongful eviction, still when the Zemindar acquires the land by purchase and takes possession even in the *benami* name of a third party seeing that he cannot pay rent to himself, the right is gone and cannot subsequently be revived (*Radha Gobind Koer* v. *Rakhal Das Mukherji*, I. L. R., 12 Calc., 82). A zemindar occupying his own lands as *nij jote* cannot, when the zemindari passes into other hands, lay claim to them on the grounds that he is a ryat with rights of occupancy (*Reed* v. *Sreekishen Singh*, 15 W. R., 430). The period during which the occupant of land is in possession as *malik* cannot be included in considering whether he has acquired a right of occupancy ; such a right must be acquired against somebody, and cannot be acquired by a man against himself (*Lal Bahadoor Singh* v. *Salano*, I. L. R., 10 Calc., 45). The putnee-

dar of a mahal which formed a portion of a zemindari, purchased the zemindari rights in the mahal. From the date of his purchase he paid no rent as putneedar. Held, that he could not set up his title as putneedar against his zemindari co-sharers, in a suit brought by them for contribution (*Prosunno Nath Roy* v. *Jogut Chunder Pundit*, 3 C. L. R., 159). But in another case it was held that the doctrine of merger does not apply to the case of a putni interest coming into the same hands as the zemindari interest (*Jibanti Nath Khan* v. *Gokool Chunder Chowdry*, I. L. R., 19 Calc., 760).

Clause (e) :

Express Surrender :—Vide sec. 83 and notes thereunder.

Clause (f) :

Implied Surrender :—Vide sec. 87 and notes thereunder.

Clause (g) :—Vide sec. 57, Clauses (*b*), (*c*) and (*d*).

Coustruction of leases :—In construing a lease, although such construction is according to the practice of the Court a question of law, the Court, must look to the surrounding circumstances, one of which is the nature of the possession given by the grantor and accepted by the grantee (*Janokee Nath Dutt* v. *Mahomed Israil*, 23 W. R., 285). if a lease on which a case depends, should appear to have been altered, it cannot be received in evidence or be acted upon till it is most satisfactorily proved by all the subscribing witnesses at the least and other evidence that the alteration was made antecedently to the signature *Petamber Manikjee* v. *Motee Chund Manikjee*, 5 W. R., P. C., 53). A material alteration made after execution does not vitiate a lease, if it be made with the consent of all the parties (*Isac Mahomed* v. *Bai Fatama*, I. L. R., 10 Bom., 487). But where the terms of a lease have been reduced to writing, no evidence can be given as to variation of its terms except under the provisions mentioned in sections 91 and 92 of the Indian Evidence Act.—A covenant in a lease for years to grant a new lease on the expiration of the existing term under and subject to all covenants, as in the first lease contained, is satisfied, if such new lease contains the like covenants as the former lease, except the covenant for renewal (*Peninsular and Oriental Steam Navigation Company* v. *Konnoy Lall Dutt*, 2 Hyde's Reports, 21). Where a Kabuliat stipulates that A, the tenant, shall not, on the expiry of his lease, be liable to pay a rent higher than that reserved in the lease, and that the landlord shall not then let the land to any other tenant, but that A shall not be entitled to erect any permanent building, or to excavate a tank, it was held that under these stipulations the landlord was not bound to re-let the land to A at the close of the term of the lease (*Fukeeroonissa Begum* v. *Chunder Monee Dassee*, 12 W. R., 538). When a

lease is granted jointly to two tenants, both are jointly liable for the rent due under the lease, and one of them cannot divide this joint liabilty (*Jogendra Deb Roy Kut* v. *Kishen Bundhoo Roy*, 7 W. R., 272; *Roop Narain Singh* v. *Juggoo Singh*, 10 W. R., 304; *Bholanath Sircar* v. *Bahram Khan*, 10 W. R., 392; *Gour Mohun Roy* v. *Anund Mundul*, 22 W. R., 295). The fact that at the foot of a *patta* the right of each lessee was defined was held not to bind the lessor to recognize each part as an independent and separate tenure, and the subsequent separate payments of rents by the tenants were held not to vary the nature of the tenure (*Buloram Paul* v. *Suroop Chunder Goohoo*, 21 W. R, 256). A lease purporting to be for a certain term of years contained a proviso that if at any time the lessee should make default in payment of rent the lessor should be at liberty to let the lands to another lessee. *Held* that the introduction of this proviso did not make the lease operate as a grant in perpetuity so long as the rent was paid, but merely had the effect of enabling the lessor to determine the lease within the term, in case of default by the tenant in paying the rent (*Shahye Royree* v. *Barton*, Marshalls' Reports, 250; 2 Hay's Reports, 14). A lease for a term of years contained a proviso that if in any year the rent should be three kists in arrear, the lessor might appoint a *Sazawal*, and the lessee would pay his salary and if, notwithstanding the appointment of such *Sazawal*, the arrears of rent were not paid by the end of the year, the lessor should be at liberty to rescind the lease. *Held* that it was a condition, precedent to the right of the lessor to rescind the lease, that he should have appointed a *Sazawal*, (*Lall Lutchmee Pershad* v. *Bhoodhun Singh*, Marshalls' Reports 474). A Government farmer of a village (the farm being or his life) sub-leased it, and the Sub-lessee, in consideration of a certain sum made a perpetual lease in favour of the defendant at a certain annual quit-rent. Subsequently the proprietary settlement of the village (the possession being conditional on expiry of the farm) was made with the sub-lessee, whose proprietary rights having been sold at auction were purchased by the plaintiff, who sued to set aside the lease. *Held*, on the construction of the lease that the proprietor professed it to be a perpetual lease, without reference to its determination on the expiry of the sub-lease, and that the auction purchaser, being the *locum tenens* of the person whose rights he purchased was estopped, as would have been the latter, from questioning the validity of the lease in favor of the defendant (*Kurn Chowbey* v. *Jankee Persad*, 1 Agra, 164). By law a Zamindar is not bound to recognise as his lessee one to whom the lease has not been given and whose name has not been registered in his books (*Sadhu Chunder Bose* v. *Gooroo Churn Bose*, 15 W. R., 99; *Annund Moyee Dossee* v. *Mohendro Narain Doss*, 15 W. R., 264). As

between the Zamindar and persons to whom he grants leases, he can not be compelled to recognize the title of any one beyond the persons with whom he deals and to whom he looks for rent ; *e. g.*, the rights of members of the family of the lessees (*Wopendro Mohun Tagore* v. *Thanda Dossia*, 12 W. R., 263).

In order to ascertain what land is actually leased, it is necessary to look to the boundaries mentioned in the lease, and not to the estimated area (*Abdool Mannah* v. *Baroda Kant Banerjee*, 15 W. R., 394). Where a patta purports to convey so many bighas of land "more or less" within certain boundaries the test of what is really conveyed is not the area of land, but its boundaries (*Sheeb Chunder Mahneeah* v. *Brojonath Aditya*, 14 W. R., 301) Plaintiff let to defendant a quantity of land, of which he was not certain how much was in cultivation and how much was jungle at a total *jama* to be eventually settled on the footing of 12 annas per bigha culturable, and 10 annas per bigha jungle, on the number of bighas of each sort which existed at the end of the year next preceding the date of the patta, the calculation of the rent to be made permanently by effecting a measurement within six months, until which time defendant should pay a provisional *jama* at 12 annas a bigha on a given, number of bighas, amounting to a specified sum. Plaintiff sued for arrears of rent, no measurement having taken place, though years had elapsed. *Held* that, until ascertainment by measurement of a settled *jama*, the rent due under the terms of the patta would be the provisional sum mentioned above ; but if the delay in such ascertainment were due to default of plaintiff, defendant would be entitled to set up the state of things which he believed would be arrived at if measurement were effected (*Bharuth Chunder Roy* v. *Bepin Beharee Chuckerbutty*, 9 W. R., 495). B. having covenanted to take from A without enquiry 18 bighas of land at a rent of Re. 1 a bigha, with a stipulation that if on enquiry any excess land should be found he would pay the same rate of rent for such excess ; or if the area should be found less than 18 bighas, that he would receive a proportionate deduction from his rent. A measurement took place, and an excess was discovered. A then sued B for rent on the entire quantity of land. *Held* that B was liable to pay rent for the excess at the rate of rupee one a bigha, and that the tender of a patta by A to B was not necessary (*Radhika Prosunno Chunder* v. *Nehalee, Churn Dey*, 15 W., R, 410). Where a party claims to have land measured by a bigha larger than the standard district bigha must prove that the standard of the larger bigha was intended to be applied (*Muhammad Imam Buksh* v. *Maheeput Singh*, Sudder Dewany Adawlut, N. W. P, for 1860, p. 239). Where a landlord leased out some land to a tenant, reserving to himself only such portion of it as fell under

the definition of *Nila Zamin*, it was held that it was for the landlord, in a suit for the possession of such *Nila Zamin*, to bring evidence to prove what portion of the land leased out was *Nila*, and that in the absence of such evidence the whole land must be taken as having been leased out to the tenant (*Reily* v. *Bama Soonduree Dossee*, 25 W. R., 398).

Stamp duty on counter-part :—The counter-part of any lease granted to a cultivator is exempted from stamp duty when such lease is exempted from duty. But when the lease is chargeable with duty, and when in respect of it the proper duty has been paid, (*a*) if the duty with which the lease is chargeable does not exceed one rupee, the proper stamp duty is the same as is payable on the lease ; but (*b*) in any other case, the proper stamp duty is one rupee (Indian Stamp Act II of 1899, Schedule, I, Art. 25). In the absence of an agreement to the contrary, the expense of providing the proper stamp in the case of a counter-part of a lease must be borne by the lessor [sec. 29 (*d*) of the Indian Stamp Act II of 1899].

Registration of a counter-part of a lease :—Under sec. 3 of the Indian Registration Act III of 1877 a lease includes a counter-part and a kabuliat. As to registration of leases vide notes on "Leases and their registration", p. 21 *ante*, "Leases held to require registration", p. 22 *ante* and "Leases held not to require registration", p. 23 *ante*.

Form of counter-part of a lease :—Vide third Schedule to this Act.

Suit for counter-part :—A separate kabuliat cannot be claimed for uncultivated lands already comprised in a lease, on the ground that such uncultivated lands have now been brought into cultivation (*Shaikh Mahomed Kaloo Chowdhury* v. *Fedaye Shikdar*, 8 W. R., 219). A suit will not lie for a kabuliat for a portion of the lands included in one entire holding, for which entire holding a *kabuliat* and *patta* have already been exchanged between the parties (*Abdool Ali* v *Yar Ali Khan Chowdhury* 8 W. R, 467 ; *Ram Doss Bhuttacharjee* v. *Ramjeebun Poddar*, 6 W. R. Act X, 103 ; *Doorgakant Mozoomdar* v. *Bisheshur Dutt Chowdhry*, W. R., 1864, Act X, 44).

In order to maintain a suit for a *kabuliat*, the plaintiff must show that the relation of landlord and tenant existed between him and the defendant (*Keisurya* v. *Chotoo*, 1 N.-W. P., 78 ; *Muhesh Dutt Pandey* v. *Seetul Sonar*, 1 N.-W. P., 146 ; *Ramessur Audhikaree* v. *Watson & Co.*, 7 W. R., 2 ; *Jalha* v. *Koylash Chunder Dey*, 10 W. R., 407 ; *Chunder Nath Nag Chowdhury* v. *Asanoollah Mundul*, 10 W. R., 438 ; *Sreemunto Koondoo* v. *Brijonath Paul Chowdhury*, 16 W. R., 296 ; *Shunto Doss Autith* v. *Hureehur Mukerjee*, 20 W. R., 268), A suit for a *kabuliat* will

lie only when an agreement fixing the rent has been entered into. (*Ahmed Reza* v, *Aghori*, 2 B. L. R., S. N., 15).

Where a suit is brought for a *kabuliat*, the first and main question is whether, as a matter of fact, the plaintiff can establish that he, or some person from whom he derives title, put the defendant into possession of all the lands in respect of which the *kabuliat* is demanded ; and the second question is whether he has tendered a proper patta, and is therefore entitled to the corresponding *kabuliat*. For the decision of such a suit it is immaterial whether the land for which the *kabuliat* is demanded belongs in reality to the plaintiff or to third parties ; and the Court should not allow the latter to come in as intervenors against the will of the plaintiff (*Radhanath Chowdhry* v. *Joy Soonder Moytra*, 2 C. L. R., 302). In order to entitle a landholder to a *kabuliat* he must tender or deliver a patta (*Gobinlall Seal* v. *Kinoo Doyal* Marshall's Reports, 400 ; *Doorga Kant Mozoomdar* v. *Bisheshur Dutt Chowdhry*, W. R., 1864, Act X, 44 ; *Umbica Churn Pottro* v. *Boidanath Pottro*, 1 W. R , 82 ; *Pertab Chunder Banerjee* v. *Phillippe*, 2 W. R., Act X, 56 ; *Troyluckhonath Chowdhry* v. *Koleema Bibee*, 2 W. R., Act X, 96 ; *Ukhoy Sunker Chackerbutty* v. *Rajah Indro Bhoosun Deb Roy*, 12 W. R., F. B., 27 ; 4 B. L. R., F. B., 58). The last ruling has overruled the following rulings in which it was held that the previous tender of a patta is not necessary to entitle a landlord to a decree for a *kabuliat*, and that the decree may make the obtaining of the *kabuliat* contingent on the offering of corresponding patta (*Govind Chunder Addy* v. *Auloo Beebee*, 1 W. R., 49 ; *Mohomed Yacoob Hossein* v. *Chowdhry Wahed Ali*, 4 W. R., Act X, 23 ; *Mansoor Ali* v. *Bunnoo Singh*, 7 W. R., 282 ; *Modhoosoodun Chowdhry* v. *Ram Mohun Ghur*, 8 W. R., 473; *Nityanund Ghose* v. *Kissen Kishore*, W. R., 1864, Act X, 82).

Attestation in lieu of registration.

97. (1) When under the provisions of this Act, or the Indian Registration Act, 1877, or any other enactment for the time being in force, any lease, counterpart, or agreement with respect to a tenancy is required to be made by registered instrument, and such lease, counterpart, or agreement—

(*a*) is for a term not exceeding ten years, and

(*b*) stipulates for rent not exceeding one hundred rupees annually,

the parties to such lease, counterpart, or agreement may, in lieu of registering the same, obtain the attestation thereto of a Revenue Court, or of a Revenue officer not inferior in rank to a kanúngo, or of such other person as the Local Government may by general or special order in this behalf appoint, and subject to such conditions (if any) as the local Government may, by rules made under this Act, direct.

(2) Such court, officer, or other person shall, after satisfying himself as to the identity of the parties, and their acquaintance with and assent to the terms of the lease, counterpart, or agreement, make, sign, and date an endorsement thereon to the effect that he has so satisfied himself.

(3) Such instrument shall thereupon be as valid as if it had been registered under the law for the time being in force for the registration of assurances.

This section is new and corresponds partly to sec. 12 of Act XII of 1881.

See notes on "Registered," p. 20, *ante*.

As to rules for attestation of leases vide Appendix B.

In the corresponding sec. 100 of the Bill as originally drafted, after clause (a) there was a clause (b) which ran thus:—"affects an area not exceeding fifty acres." But the Select Commitee omitted this clause with the following remarks:—" We have struck out the stipulation contained in clause (b), as the area of a holding is not one of the criteria by which the Registration Act determines the liability of a document to be registered" (Vide report of the Select Committee, printed at p. 71 of the N.-W P. & O. Gazette, dated 22nd June 1901).

Landholder's right to measure land

98. In the absence of a contract to the contrary, a landholder is entitled to enter upon and measure the holding of his tenant.

This section is new and corresponds to sec. 90 of the Bengal Tenancy Act.

In the Bill as originally drafted there was a section 102 which ran as follows —

102. (1) The Court may, on the application of a landholder, issue a notice to a tenant requiring him to attend and point out the boundaries of his holding.

(2) If the tenant fail to attend, a map or other record of the boundaries and measurements of the land prepared at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary be shown.

(3) Nothing in this section shall be deemed to prevent either landholder or tenant from bringing a suit under section 103, whether before or after any such measurement.

But the Select Committee ommited the above section with the following remarks, " because we consider it is unnecessary to make any such provision in these Provinces, in which there is for every mahal an authoritative survey and record of rights. If the landholder, having ascertained from his own information the area occupied by his tenant, desires a judicial declaration of that area and the correction of the map and annual register, he can proceed under sec. 99 (now sec. 95.)" [Report of the Select Committee printed at page 71 of the N.-W. P. and O. Gazette, dated 22d June, 1901].

What lands a landholder may measure:—A landholder is not debarred from measuring the holding of his tenant merely because there are under-tenures, and the land is not in the occupation of his immediate tenant (*Run Bahadoor Singh* v. *Muloorum Tewaree*, 8 W. R., 149; *Tweedie* v. *Ram Narain Dass*, 9 W. R., 151; *Ranee Krishto Motee Debia* v. *Ram Nidhee Sircar*, 9 W. R., 331). But a contrary view was taken in *Dwarkanath Chuckerbutty* v. *Bhowanee Kishore Chuckerbutty*, (8 W. R., 11).

Measurement by one of two or more joint landholders:—Under sec. 194, where there are two or more joint landholders, one of them cannot measure, unless they have appointed an agent to act on behalf of them all.

CHAPTER VIII.

PAYMENT AND RECOVERY OF RENT.

Payment and Arrears of Rent.

Instalments of rent.

99. The rent of a tenant shall be payable in instalments according to agreement, or when there is no agreement, in such instalments and on such dates as the Local Government may, by rules made under this Act, prescribe.

This section is new.

In the Bill as originally drafted printed at page 49 of the N.-W. P. and O. Gazette, dated 17th November 1900, this section ran as follows—"The rent of a tenant shall be payable in instalments according to agreement *or established usage etc. etc.*" But the Select Committee omitted the words "or established usage" with the following remarks :—"We have struck out the words 'established usage.' In the absence of any agreement, rents will be payable in instalments fixed under the rules made for this purpose.

The rules will necessarily lay down that in fixing instalments regard shall be had to any local custom that may be found to exist and it would be of great practical inconvenience if it were open to the parties to a suit for arrears of rent to plead a local custom, and the Court were compelled to decide the issue raised in individual suits."

Rules:—see appendix B.

Rent how payable.

100. A payment of rent may be made by the tenant, or through his agent, or by postal money-order, or by deposit in court under section 111.

This section is new and has ben taken with certain modification from section 54 of the Bengal Tenancy Act.

This section relates to such payment of rent as is made before a decree for arrears of rent is passed. If any payment of rent be made under a decree, it should be certified under Sec. 258 of the Code of Civil Procedure.

101. An instalment of rent not paid on the day on which it falls due becomes on the following day arrear of rent and the tenant shall be liable to pay interest on such arrear at one per cent, per mensem.

Rent when in arrear.

This section corresponds to Sec. 34 (*a*) of Act XII of 1881.

Due payment of rent :—Payment of rent to one of several joint proprietors is payment to all (*Baboo Oodit Narain Singh* v. *H. Hudson*, 2 W. R., Act X, 15.)

A tenant may, in the absence of fraud, make payment to any one of the co-proprietors whom he chooses (*Mookta Keshi Dossee* v. *Koylash Chunder Mitter*, 7 W. R., 493). Payment by a tenant under the landlord's directions, to another or for a specified purpose of a sum equivalent to the amount claimed as rent, is tantamount to a payment to the landlord himself (*Mussamut Joy Kooer* v. *J. Furlong* W. R., Sp. No. 1864, Act X, 112).

Shall be liable to pay interest:—Mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent, does not amount to a waiver of such right (*Johari Lall* v. *Ballab Lall*, I. L. R., 5 Calc., 102). The landlord's omission to claim interest instalment by instalment, for the fractional time that the rent was not paid did not warrant the belief that the plaintiff had waived his claim to interest (*Rutty Kant Bose* v. *Gunga Dhur Biswas*, W. R., F.B., 13). The mere omission to claim interest for some years from a tenant at the rate stipulated in the lease does not amount to a waiver of the landlord's right to claim interest at such a rate (*Shyama Charan Mandal* v. *Heras Mollah*, I. L. R. 26 Calc., 160).

In *Hemanto Kumari Debi* v. *Jagadinrao Nath Rai*, (I. L. R., 22 Calc., 221), their Lordships of the Privy Council observed that in cases where rent is payable monthly interest on arrears of rent ought to be calculated monthly.

Liable :—The word 'liable' leaves it in the discretion of a Court to grant interest or not (*Kashee Nath Roy Chowdhry* v. *Mynuddeen Chowdhry*, 1 W. R. 154). In suits for arrears of rent, a Court of justice is not bound in every instance to award interest at 12 per cent, the rate specified in Act VIII (B. C.) of 1869 s. 21, but has discretion either to disallow interest altogether or to reduce the rate according to the circumstances of each case. Where a plaintiff sought to recover more than what was actually due, and it did not appear that defendant would have refused payment if the sum

actually due had been demanded, the Court reduced the rate of interest to 6 per cent (*Mussamut Bibee Fuseehun* v. *Mussamut Ashrafoonnissa*, 23 W. R., 463). The discretion which a Court has to refuse interest can only be exercised upon very clear grounds (*Johoory Lall* v. *Bullab Lall* I. L. R., 5 Calc., 102).

Stipulations relating to interest :—It would seem that since the provisions of this section are discretionary an agreement between a landlord and a tenant to charge a lower rate of interest than that provided in this section would be perfectly valid but an agreement to pay any higher rate of interest than that provided in this section would be illegal under sec. 3 of this Act.

In a case in which the tenant had agreed by a *Kabuliyat* executed before the passing of the Bengal Tenancy Act, but the term of which expired after the Act had come into force, to pay interest on arrears at the rate of one anna per rupee *per mensem*, it was held that this was a good contract during the pendency of the lease, but on the expiry of its term the tenant, who had held on without executing a fresh lease was liable to pay interest on the arrears only at the rate of 12 per cent per annum (*Alim* v. *Satis Chandra Chaturdhurin*, I. L. R., 24 Calc., 37). An agricultural tenant held under the lease for 6 years the term of which expired in 1881, and had been holding ever since. The rate of interest specified in the lease was 75 per cent per annum. The landlord's suit was for rent for the years 1893 to 1895 and part of 1896, with interest at the rates specified in the lease. *Held*, that under the provisions of the Bengal Tenancy Act (VIII of 1885) the plaintiff could not recover interest at a rate higher than 12 per cent per annum (*Administrator General of Bengal* v. *Asraf Ali* I. L. R, 28 Calc. 227).

Recovery of arrears.

102. (1) An arrear of rent shall be recoverable by suit, or by distraint in accordance with the provisions of this Act, or in both of such ways.

N. W. P. & O. III of 1899.

(2) The provisions of sections 36 to 39 of the North-Western Provinces and Oudh Court of Wards Act, 1899, are hereby made applicable, *mutatis mutandis*, to the recovery of rents in all Government properties.

This section is new.

Suits for arrears of rent :—The rent must be authoritatively

determined by a competent Court or by agreement of parties before the landlord can come into Court to sue for arrears of rent (*Moulvi Muhammad Ali* v. *Maulvi Farzand Ali*, S. D. B. R., No. 9 of 1885 ; *Phulahra* v. *Jeolal Singh*, I. L. R., 6 All., 52 ; W. N., 1883, p. 203 ; *Zalim Rai* v. *Durga Rai*, 1 Agra, Rev., 69 ; *Sheo Prasad* v. *Beni Singh*, W. N., 1892, p. 56 ; *Debi Singh* v. *Muhammad Ismail Khan*, W. N., 1898, p. 38 ; *Manni Tewari* v. *Rajkumar Lal*, A. L. J. vol. II. p. 1). A landholder having executed a *razinama* or *bazdawa* relinquishing his right to recover an enhanced rate of rent is barred thereafter from action in a suit for arrears for the enhanced rate notwithsanding that no change has been recorded in the rent roll on account of the *bazdawa* (*Ranjit* v. *Kori*, S. D. B. R., No. 6 of 1883). An arrear of rent is not due until the rent itself has been determined (*Komul Lochun Roy* v. *Moran & Co*, 2 W. R., Act X, 82). A suit will lie under the Rent Act for rent payable under an agreement that land taken and occupied without an actual demise should be paid for at certain rates (*Jadoobur Singh* v. *Beharee Singh*, 2 N. W. P., 437).

A suit for arrears of rent cannot be maintained against a person who has become surety for payment of rent, because Revenue Court is not competent to entertain such a suit (*Bhugwan Chunder Roy Chowdhri* v. *Manik Bibee*, I. L. R., 9 Calc., 383) nor against a bailee (*Joga Singh* v. *Chooa Singh*, I. L. R., 22 Calc.. 480). An assignee is only liable for rent which accrued after the date of his assignment (*Rash Behary Bundopadhya* v. *Peary Mohun Mookerjee*, I. L. R., 4 Calc, 346 ; *Mussamat Phool Koonwar* v. *Chardon*, 6 W. R. Act X, 89). The purchasers of certain arrears of rent due to a zamindar sued the tenants, for the recovery of those arrears, under section 93 (*a*) of Act XII of 1881. Held, that the suit was cognisable by a Revenue Court and by no other Court (*Ram Chand* v. *Chhimman*, S. D.B.R., No. 2 of 1902). An occupancy tenant in possession, who has accepted the occupancy holding, is liable to be sued for arrears of rent not barred by limitation which accrued in the life time of the person from whom the right of occupancy has devolved upon him (*Lekhraj Singh* v. *Rai Singh*, I. L. R., 14 All., 381 ; W. N., 1892, p. 143). Where there is any agreement to pay rent in crops and the produce is not paid, a suit for the money value of the produce at the time when it ought to have been paid, will lie as a suit for arrears of rent (*Kristo Bhundhoo Bhuttacharjee* v. *Rotish Shaikh*, 25 W. R., 307). A landlord who refuses to accept rent in kind when it is offered to him, on the ground that he is suing for a money rent, cannot, on the dismissal of his suit come into court again and sue his tenant for the value of what he refused when it was proferred (*Mohunt Narain Geer* v. *Gour Surun Dass*, 23 W. R., 368). A landlord claiming rent from a rayat for a period after the expiry of his lease is bound to prove that

the latter held on subsequently to the term of the lease (*Tiluck Pattuck* v. *Mahabeer Pandey*, 15 W. R., 454). As long as the relationship which arises out of a lease subsists, the lessee (tenant) is bound to pay to the lessor (landlord) the rents reserved therein. A tenant, denying a landlord's claim to rent on the allegation that the relationship has terminated, is bound to prove his allegation (*Mohun Mahtoo* v. *Meer Shamsool Honda*, 21 W. R., p. 5). Where the relation of landlord and tenant ceases with the consent of the landlord, the landlord cannot again claim rent unless he shows how or when the relation revived (*Modun Mohun Roy Chowdhry* v. *Chunder Sekhur Bhuttacharjee*, 25 W. R., p. 114).

Where there are two or more co-sharers all must join any suit for rent, except where there is any local custom or special contract by which a co-sharer in an undivided property is entitled to receive separately his share of the rent payable by a tenant (vide sec. 194). Where co-sharers in an undivided property acquiesce in a decision declaring one of their number the owner of a recognized share in such property, it is not open to a tenant (who had previously agreed to pay his rent in accordance with the shares of the respective part-owners) to refuse payment of the proportionate share of the rent claimed by such co-sharer as the owner of the recognized share, simply on the ground that he had never before paid rent so proportioned to such co-sharer (*Lootfulhuck* v. *Gopee Chunder Majoomdar*, I. L. R., 5 Calc., 941). In a suit by the lambardar of a joint undivided mahal for rent, the defence was that the tenant had paid the rent to a co-sharer. It appeared that the intention of the wajib-ul-arz was that rents should be collected by the lambardar. *Held* that this being so, and the intention of the Legislature in passing the N. W. P. Rent Act (XII of 1881) being that in a mahal of this kind the lambardar and not the co-sharer was the person to whom rent should be paid the payment relied on did not relieve the tenant from his liability to the lambardar (*Ganga Sahai* v. *Ganga Bakhsh*, W. N., 1890 p. 3). In a suit by a co-sharer in a Zamindari for arrears of rent, the defendants proved that they had paid a certain amount to a third person who had succeeded the plaintiff as *lambardar*. It was found that the payment had not been made to the lambardar in his capacity as such. *Held*, that the suit must fail, in as much as the rent had been paid to the general manager or agent for the plaintiff, and also because on the principle of sec. 50 of the Transfer of Property Act, the payment extinguished the plaintiff's claim; and that the plaintiff's remedy was either to sue the lambardar, or else to have the amount in question taken into account at the yearly *bujharat* of the zemindari (*Chatri* v. *Bahadoor Singh*, W. N., 1888

p. 45). In a suit for rent by a share-holder where defendant contends that he is not bound to pay otherwise than by entirety to the person entitled to the whole rent the onus is on the plaintiff to show that he is entitled to sue for a fractional portion (*Mussamut Lalun* v. *Hemraj Singh*, 20 W. R., 76; see also *Shaikh Ashruf* v. *Ram Kishore Ghose*, 23 W. R., 289).

A Zamindar is not entitled to rent for a year in which he has illegally distrained and (to a great extent destroyed the crops of the rayat (*Ram Dyal Singh* v. *Luchmee Narain Singh*, 1 W. R., 240). A landlord cannot claim rent under a kabuliat where the lessee has never obtained possession, delivery of possession being ordinarily a condition necessary for the maintenance of an action for rent (*Hurish Chunder Koondoo* v. *Mohinee Mohun Mitter*, 9 W. R., 582; *Joodhesty Merdha* v. *Taruck Chunder Chuckerbutty*, 22 W. R., 299; *Kalee Dass Banerjee* v. *Nubeen Chunder Chatterjee*, 24 W. R., 91). But no subsequent interruption by the landholder in the tenant's occupation and enjoyment of land would be an answer to the landlord's claim for rent which had accrued previous to such interruption (*Madhub Chunder Muzoomdar* v. *Sidhee Nuzeer Ali Khan*, 8 W. R., 54).

A tenant is not warranted in refusing to pay rent simply on the apprehension that he may be called on to pay rent by a party who is said to have obtained a decree against the landlord for the lands. Even if a decree has been passed against the persons from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force (*Burn & Co.* v. *Rusho Moyee Dosse*, 14 W. R., 85). The appellant, a Zemindar, sued the respondent, his tenant, for the value of his share of the produce of certain land by way of rent, alleging that the rent was paid in kind. The respondent alleged that the rent of the land in question was payable in coin, admitting, however, that it had formerly been paid in kind. Held that the burden of proving the change alleged by the respondent lay on him (*Grish Chander* v. *Ganpat Narain*, W. N., 1882, p. 113). Where the rent reserved by a lease of several estates is a lump sum, a claim to recover it under the lease cannot be split and apportioned (*Asman Khan* v. *Chowdhry Sheoraj Singh*, 5 N. W. P., 42). If the tenant pleads payment the burden of proof lies with him (*Koonjoo Beharee Banerjee* v. *Roy Moothooranauth Chowdry*, 1 W. R., 155; *Pureeag Lall* v. *Ram Jeewan Lall*, 1 W. R., 264).

Where a tenant is left in that condition in which he is compelled to pay his landlord's debt to save his own security from forfeiture, the circumstances constitute a sufficient authority to make the payment, *e.g.*, the payment of Government revenue to save the estate from sale; and

such payment is a good defence to a claim for arrears of rent (*James Hills* v. *Wooma Moyee Burmonee*, 15 W. R., 545). When a landlord has brought a tenure to sale in execution of a decree for arrears of rent, the purchaser becomes his tenant only from the date of confirmation of the sale, and the arrears accruing due between the date of sale and the date of confirmation of sale must be treated as arrears of rent payable by the out-going tenant whose interest does not cease till the sale is confirmed (*Karunami Banerjee* v. *Surendra Nath Mookerjee*, 2 C. W. N., CCCXXVII). Payment of rent by a tenant made in good faith to the recorded proprietor absolves the tenant from liability to another claimant (*Kalla* v. *Mussamut Kishore Kunwar*, S. D. B. R. No. 4 of 1885). An auction purchaser, with notice of a payment in advance, made by the tenant to the former proprietors, of rent due for a period subsequent to the date of purchase, is bound by such payment (*Ram Lall Shaw* v. *Rao Joggendro Narain Roy*, 18 W. R. 328; *Madan Mohun Lal* v. *F. Holloway*, I. L. R., 12 Calc, 555). If a plaintiff's title to the rent claimed is disproved, his suit must fail, even if he is in possession and has realized the rents of previous years (*Ranee Tillessure Kooer* v. *Ranee Asmedh Kooer*, 24 W. R., 101). In a suit for arrears of rent under Sec. 93 (*a*) of the N.-W. P. Rent Act, 1881, the defendant proved a local custom whereby a tenant was entitled to a proportionate deduction from the rent for any year for such lands as were in that year, owing to fluvial action, unculturable by being submerged by water or covered by sand. No application for abatement of rent had been made under Chap. II of Act XII of 1881. *Held* that in as much as the defendant did not by his plea seek for an abatement of rent in the sense of Chapter II Act XII of 1881 namely, a reduction permanently or for an indeterminate period of the rent payable for his holding, but only a remission or deduction from such rent for a particular year and in respect of such portions of the holding as were unculturable in that year and in as much as no such remission could have been obtained in proceedings under Chapter II, Act XII of 1881, the custom did not over-ride any of the provisions of that Act, and must be given effect to by the Court trying the suit (*Bani Prasad Kuari* v. *Dukhi Rai*, I. L. R., 23 All., 270; W. N., 1901, p. 69). The effect of Sec. 56 of the N.-W. P. Rent Act, 1881, is not to bar the landholder from suing for any balance of the rent due, if he has failed to recover that rent by distress and sale of the produce of the land (*Thakur Bhola Nath* v. *Bhima*, S. D. B. R., No. 3 of 1900). Plaintiff having paid arrears of rent to defendant, as his landlord's authorized agent, was afterwards sued for those arrears by the landlord who obtained a decree, the Courts holding that the payment to the agent was one which did not bind the

landlord. Plaintiff then sued the agent who had received the money. *Held* that the suit was an action for damages, which the Revenue Courts had no jurisdiction to entertain (*Bykuntnath Sandyal* v. *Kalee Churn Paul*, 13 W. R., 359).

Denial of title in a suit for rent :—In a suit for arrears of rent on the basis of a *Kabooleut* which defendant, though not denying its execution contended was benamee, the real ownership lying with others ; the Lower Appellate Court refused to look behind the *Kabooleut* on the principle that a tenant under the circumstances could not deny his landlord's title, it was held in pursuance of a view expressed by the Privy Council, that benamee transactions are to be regarded as a recognized system amongst Hindoos, that the Judge ought to have tried the question whether the lessor's title was not merely benamee or fictitious ; and it was also held that the question should not have been entangled by the technical doctrine of estoppel which should not be applied in this country in the manner in which it is applied in cases governed by English law (*Douzelle* v. *Baboo Kedarnath Chuckerbutty*, 16 W. R., p. 187). A, rayat being in possesion of a certain holding, executed a *Kabooleut* regarding his holding in favour of B, (who claimed the land, in which the holding was included, under a derivative title from the last owner), and paid rent to B thereunder. *Held*, that A was not estopped by Sec. 116 of the Evidence Act from disputing B's title. The words "at the beginning of the tenancy" in Sec. 116 of Act I of 1872 only apply to cases in which tenants are put into possession of the tenancy by the person to whom they have attorned, and not to cases in which the tenants have previously been in possession (*Lal Mahomed* v. *Kallanus* I. L. R., 11 Calc., 519). The admission of a man's representative character by payment of rent to him is not conclusive, but *primâ facie* evidence which the tenant is not estopped from rebutting if he can. Thus in a suit for rent by a putnidar, who claimed under a lease granted him by a Hindu widow, whose husband had left a will giving her no power to alienate, it was held that although it was shown that the widow had been in receipt of rents, the suit was rightly dismissed. One who pays rent to another believing him to be the landlord's representative is not estopped from afterwards showing the want of title in that other : so here the defendant was not estopped from showing that, under the deceased husband's will, the plaintiff had no title (*Banee Madhub Ghose* v. *Thakoor Dass Mundul*, B.L.R. Sup Vol., 588 ; 6 W. R., Act X, 71 ; *Ranee Tillessuree Kooer* v. *Ranee Asmedh Kooer*, 24 W. R. 101). Mere non-payment of rent to the landlord does not render possession by tenants adverse to the landlord (*Gangabai* v. *Kalapa Dari Makrya*, I. L. R., 9 Bom , 419). But see *Kirpa Shunkur* v. *Pal Pandey*, 1 Agra,

Rev. 47; *Dinobundhoo Suhaye* v. *The Court of Wards*, 11 W. R. 347; *Collector of Rungpore* v. *Ram Jadub Sein*, W. R., 1864, 243.

Rate of rent payable :—Vide Sec. 35.

Limitation, jurisdiction, suit, appeal, review, and revision :—Suits under this section should be brought within three years from the time when the arrears become due (4th Schedule, Group A Serial No. 2).

(1) Suits for arrears of rent not exceeding one hundred rupees should be filed in the Court of Tahsildar (Assistant Collector of the second class) [Sec. 174 (*a*)] An appeal will lie to the Collector from the decree of an Assistant Collector of the second class [sec. 176 (*a*)] within thirty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 52). A second appeal will lie to the District Judge from the appellate decree of the Collector under the provisions of sec. 180 (2) within thirty days from the date of the decree appealed against (Indian Limitation Act XV of 1877, second Schedule, 2nd Division, Art. No. 152). The decision of the District Judge will be final.

As to revision of the decree of the district judge vide sec. 622 of the Code of Civil Procedure. If however the decision of the Collector on appeal becomes final by reason of no second appeal being allowable under sec. 180 (2), an application for revision of the Collector's decision may be made to the Board under the provisions of sec. 185.

As to review vide secs. 183 and 184.

(2) Suits for arrears of rent exceeding one hundred rupees should be filed in the Court of the Assistant Collector in charge of the sub-division; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (*b*)]. Such suits may be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of the Collector [sec. 180 (1)] will lie to the District judge within thirty days from the date of the decree appealed against (Indian Limitation Act, Second schedule, second division, Art. 152); if (*a*) the amount or value of the subject matter exceeds one hundred rupees; or (*b*) the rent annually payable by a tenant has been a matter in issue in the Court of 1st instance, and is a matter in issue in the appeal; or (*c*) the amount of rent payable separately to one or more of a number of co-sharers has been in issue in the Court of 1st instance, and is a matter in issue in the appeal: provided that when the amount or value of the

subject matter of the suit exceeds five thousand rupees, the appeal will lie to the High Court (sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act, Schedule II, second division, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a district judge in accordance with the provisions of Chap. XLII of the Code of Civil Procedure (sec. 182).

As to review vide sec. 184.

Court fee :—The Court-fee payable on plaints and memoranda of appeal will be computed according to the amount of rent claimed [sec. 7 (i) of the Court Fees Act VII of 1870].

'**Or by distraint** :—See Chapter IX.

Sub-section (2) :—secs. 36 to 39 of the N.-W. P. and Oudh Court of Wards Act, 1899 run as follows :—

Section 36 :—(1) Notwithstanding anything to the contrary contained in Act XII of 1881 (the North-Western Provinces Rent Act), Act XXII of 1886 (the Oudh Rent Act) Act IX of 1889 (the North-Western Provinces and Oudh Kanungos and Patwaris Act), Act III of 1878 (the North-Western Provinces Local Rates Act) or North-Western Provinces and Oudh Act V of 1894 (the Oudh Local Rates Act), arrears of rent, rates and cesses due by under-proprietors, farmers or tenants in respect of property under the charge of the Court of Wards (whether such rents, rates and cesses became due before or after the Court of Wards took charge may, under the orders of the Collector of the district in which such property is situated, be recovered as arrears of land revenue, by any process by which arrears of land revenue may, for the time being, be recovered.

(2) Nothing in this and the three next following sections shall be held to prevent the Collector from proceeding under section 158 of the Oudh Revenue Act, 1876, in any case to which that section applies.

Section 37 :—(1) When a Collector decides to proceed under the last preceding section he shall, on being satisfied that the arrear is due and that payment thereof has been demanded, grant a certificate stating the amount due and the person by whom it is payable, and such certificate, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(2) The certificate shall be for the amount of all arrears and interest due and recoverable under the North-Western Provinces Rent Act, 1881, the Oudh Rent Act, 1886, Act IX of 1889 (the North-Western Provinces and Oudh Kanungos and Patwaris Act), Act III of 1878 (the North-Western Provinces Local Rates Act), or North-Western Provinces and

Oudh Act V of 1894 (the Oudh Local Rates Act), and there shall be payable in respect thereof a court-fee of the same amount as is payable under the Court Fees Act for the time being in force in respect of a plaint for the same amount under section 93 (*a*) of the North-Western Provinces Rent Act, 1881, or section 108A (2) of the Oudh Rent Act, 1886, and the amount of such Court-fee may be included in the amount for which the certificate is given.

Section 38 :—(1) If the person named in the certificate deny his liability for the amount named therein or any part thereof he may, within thirty days from receiving notice thereof, or if no notice is given, within thirty days after any process for realising the amount or enforcing the certificate has been executed, present a petition to the Collector stating the grounds of his denial.

(2). The Collector may—

(*i*) reject such petition summarily ; or

(*ii*) after such inquiry as he thinks fit, amend or cancel the certificate or suspend its execution for such time as he may think fit ; or

(*iii*) remit the certificate and petition to any Rent Court having jurisdiction to be dealt with as a suit between the manager and the petitioner, and the certificate shall thereupon be treated as a plaint duly presented under the North-Western Provinces Rent Act, 1881, or the Oudh Rent Act, 1886.

Section 39 :—(1) Any person who has presented a petition under the last section,

(*a*) if that petition has been rejected under clause (*i*) of sub-section (2) of that section, or

(*b*) has not been cancelled or amended to his satisfaction under clause (*ii*), or

(*c*) has not been remitted to be dealt with under clause (*iii*), may, if he denies his liability to pay the amount entered in the certificate or any part thereof, and pays the same under protest made in writing at the time of payment, institute a Civil suit for the recovery of the amount or the part thereof so paid.

(2) In such suit the plaintiff may, notwithstanding anything in section 37, give evidence with respect to any matter stated in the certificate.

Compensation for extorting payment of rent by duress.

103. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled

to recover from the person guilty of such extortion such compensation, not exceeding the sum of two hundred rupees, as the Court thinks fit to decree.

(2). An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

This section corresponds to section 49 of Act XII of 1881.

Sub-section(1) :—

'Rent' :—Vide sec. 4 (3) and notes thereunder, pp. 12 to 15 *ante.*

'Legally due or not' :—The difference between this section and sec. 36 is three-fold. (1) Under section 36 there must have been *exaction* while under this section there must have been *extortion* ; (2) under sec. 36 the amount exacted must be in excess of the amount legally recoverable from the tenant, while under this section the amount extorted may or may not be legally due ; and (3) under sec. 36 the amount exacted must be in excess of the amount of the rent due from the tenant at the time of such exaction, while under this section the amount extorted may be either less or more than the amount of rent due from the tenant at the time of such extortion.

'Extorted' :—Sec. 383 of the Indian Penal Code gives the following definition of extortion :—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or any thing signed or sealed which may be converted into a valuable security, commits 'extortion.'

Illegal confinement :— i. e., wrongful confinement which is defined as follows by section 340 of the Indian Penal Code :—Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said 'wrongfully to confine' that person.

'Duress':—Duress may consist either in actual violence, or in a threat thereof. It is a term of the English Law and is included in the word "coercion," as defined by sec 15. of the contract Act IX of 1872 It runs as follows : —

'5. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement

Explanation—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed."

Limitation, Jurisdiction, suit, appeal, and review:—Suits under this section should be filed within one year from the date of the extortion (4th Schedule, Group B, Serial No. 15) in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (b)]. Such suits may be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collecter [sec. 180 (1)] would lie to the district Judge within thirty days from the date of the decree appealed against (Indian Limitation Act, Second Schedule, Second division, Art 152) if the amount or value of the subject matter exceeds hundred rupees ; provided that when the amount or value of the subject matter exceeds five thousand rupees the appeal will lie to the High Court (sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act, Second Schedule, Second division, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of chap. XLII of the Code of Civil Procedure (sec. 182).

As to review vide secs. 183 and 184.

Court Fee :—The Court-fee payable on a plaint or memorandum of appeal will be computed according to the amount claimed [sec. 7 (i) of Act VII of 1870).

Sub-section (2) :

Punishment for extortion under the Indian Penal Code :—Vide secs. 384 to 389 of the Indian Penal Code.

Produce Rents.

104. (1) When rent is taken by estimate or appraisement of the standing crop, the tenant shall be entitled to the exclusive possession of the crop.

Rights and liabilities in respect of produce.

(2) When rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or

in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landholder.

(4) If the tenant removes any portion of the crop or produce at such a time or in such a manner as to prevent the due estimate or appraisement or division thereof, or deals therewith in a manner contrary to local custom, the produce may be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest.

This section is new and corresponds to sec. 71 of the Bengal Tenancy Act and sec. 12 of the Punjab Tenancy Act.

Suit against a depository :—In the course of proceedings under secs 69 and 70 of the Bengal Tenancy Act, the landlords (ticcadar's) share of the produce was deposited by the Amin by order of the Collector, with two persons. The depositaries executed and delivered a receipt to the Amin. Some time after, the ticcadar made an application to the Collector in order to obtain his share of the produce ; but on a representation being made by one of the depositaries that the crops (with the exception of a small portion) had been destroyed by rain, the Collector declined to grant any relief to the ticcadar. The ticcadar then brought a suit against the depositaries for recovery of the value of the crops deposited. *Held* that the receipt executed and delivered to the Amin established privity between the plaintiff and the defendant so as to enable the former to maintain the suit. *Held*, also, that the suit was maintainable in the Civil Court. Sections 69 and 70 of the Bengal Tenancy Act refer to and contemplate proceedings between the landlord and the tenant. When a plaintiff seeks relief, not against his tenant, but against a third party, a depositary or bailee, the suit is not barred by any thing contained in those sections (*Joga Singh* v. *Chooa Singh*, I. L. R., 22 Calc., 480).

Sub-section (2):

Suits for produce-rents :—Where there is an agreement to pay

rent in crops, and produce is not paid, a suit for the money-value of the produce at the time when it ought to have been paid, will lie as a suit for arrears of rent (*Krishto Bundhoo Bhuttacharjee* v. *Rotish Shaikh*, 25 W. R., 307). A landlord who refuses to accept rent in kind when it is offered to him, on the ground that he is suing for the money-rent, cannot, on the dismissal of his suit, come into Court again and sue his tenant for the value of what he refused when it was proferred (*Mohunt Narain Geer* v. *Gaur Surun Dass*, 23 W. R., 368). In a suit for payment of rent in kind the fact that the plaintiff has been in the habit of receiving the value of the produce payable to him instead of the produce itself does not necessarily bind him to take rent in cash for the future (C. J. No. 23, P. R., 1873). The damage to the plaintiff is the value of the crops at the time they were due and not subsequently (*Luchmun Pershad* v. *Hoolas Mahtoon*, 11 W. R., 151). A *Khasra* or appraisement of the crops showing that the estimate was drawn up in the presence of the tenant and was acknowledged by him, will be sufficient if the tenant had notice that the *Khasra* was about to be made (*Huree Narain Singh* v. *Beljeet Jha*, 24 W. R., 125).

Sub-section (4):

'May be deemed':—The presumption as to the fulness of the crops arising in favour of the landlord under this sub-section is not conclusive; it can be rebutted, because the word used is 'may' and not 'shall.'

'Similar land':—See under sec. 42 (*a*), p. *ante*.

'For that harvest':—The damage to the plaintiff is the value of the crops at the time they were due, and not subsequently (*Luchmun Pershad* v. *Hoolas Mahtoon*, 11 W. R., 151).

Application for officer to make division, estimate, or appraisement.

105. When rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop—

(*a*) if either landholder or tenant neglects to attend at the proper time, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

an application may be presented by either party to

the Court requesting that an officer be deputed to make the division, estimate, or appraisement.

With the application the applicant shall deposit such fee as may be prescribed by the Local Government in rules made in this behalf.

This section corresponds to sec. 43 (*a*) of Act XII of 1881, to sec. 17 of the Punjab Tenancy Act and to sec. 69 of the Bengal Tenancy Act.

When an application for appraisement of standing crop is made, the fact that owing to the neglect of the official to whom the duty of appraisement was entrusted, the actual appraisement was not made while the crop was standing does not prevent the appraisement being carried out. It is necessary that the crop should be standing at the time that the application for its appraisement is made (*Ganga Prasad* v. *Gauri Shankar* S. D. B. R., No. 1 of 1886).

Division or appraisement:—Mr. Justice Rampini in his commentary on his Bengal Tenancy Act thus describes how a division or appraisement of standing crops is made:—"Produce rents are collected on two systems, called the *agorebatai* and *danabandi* systems. According to the former, the produce is divided between the landlord and tenant. According to the latter, the out-turn of the crop and its value are appraised, and the tenant pays the landlord his share either in grain or money, as may be agreed on. The two systems are described in a letter from the Commissioner of Patna to the Board of Revenue, in No. 1130 of the 21st August, 1858, as follows. Under the *agorebatai* system 'the landlord employs men,' it said, 'to watch his share of the crop when it approaches maturity, and when it is ready, cuts and carries it himself. In a more common variety of the same tenure the crop is cut and threshed by a rayat under the superintendence of the Zamindar's servants, and the produce divided on the threshing-floor; but it is also matter of arrangement between the parties in this case, whether the landlord shall have the straw or only the grain, and whether it shall be delivered at the threshing—floor of the rayat's village, or at some other place more convenient to the Zamindar.' Under the *danabandi* system it said, 'when the crop is ripe, the *patwari*, the *gomashta*, *the amin jareebkush* or measure, a *Salis* or arbitrator a *nevisinda* or writer,' and the *jet* rayats, (head rayats 'of the village with the rayat himself, proceed to the field in which the crop is growing. The *Salis* first makes an estimate of the produce, the *amin* then makes another. If the two estimates agree, the matter is considered settled. If they differ, the rayat cuts a cottah where the crop is thinnest the Zamindar's people

cut another, where it is heaviest. The produce is threshed out, mixed together, and weighed, and the produce of the whole field is estimated from the sample. A memorandum of the result, called a *danabandi*, is made out by the *Patwari* and his writer, and signed by those present. The rayat is then at liberty to cut and store his grain. The *patwari* next prepares a paper, called a *behree*, showing the amount of grain in the possession of the raiyat, and the respective shares of the *malik* and the rayat, and sends for the *malik's* share, which the rayat either pays in grain or money as may have been agreed upon. If the agreement is to pay in money, the gomashta writes to the *amlah* of the surrounding villages for the *nirikh* or market rate, which is returned on the back of his letter, and an average is then struck. It will thus be seen the accounts of the estimate of the crop and its weighment form the chief evidence in these *bhaoli* cases, and that a *jamawasil* account is of comparatively little use'.

'Officer':—A person nominated by the Court under Sec. 69 of the Bengal Tenancy Act corresponding to this section) for the purpose of making a division of crops between the landlord and the tenant, is not a public servant within the meaning of Sec. 186 of the Indian Penal Code (*Chatter Lal* v. *Thacoor Pershad*, I. L. R., 18 Calc., 518).

Disputes as to the nature of tenancy cannot be decided under this section: This section does not give the Court power to decide disputes as to whether the tenancy is a *bhaoli* one, or one held on a money rent. When there is a *bona fide* dispute as to whether rent is *bhaoli* or *nugdi*, the Court has no jurisdiction to proceed under Secs. 69 and 70 of the Bengal Tenancy Act (*Nukhada Singh* v. *Ripu Mardan Singh*, 4 C. W. N., 239).

Application for division or appraisement should be made by the whole body of landlords:—An application under this section should be made by the whole body of landlords, and not by a co-sharer landlord only, except where they have appointed an agent to act on behalf of them all, or where there is a local custom, or special contract by which a co-sharer in an undivided property is entitled to receive separately his share of the rent payable by the tenant [Sec. 194, Sub-sections (1) and (2].

Stamp duty:—An appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent, is exempt from stamp duty (The Indian Stamp Act II of 1899, Schedule I, Art. 8).

Limitation, jurisdiction, application, appeal, review and revision:—There is no period of limitation for an application under this section (4th Schedule, Group D. Serial No. 43).

An application under this section should be filed in the Court of

Tahsildar [Sec. 174 (*a*)] who is empowered to dispose of such application (Sec. (171).. An application under this section may be disposed of *ex parte* [Sec. 193 (*b*)] An appeal will lie to the Collector from the order of an Assistant Collector of the second class [Sec. 176 (*b*)] within thirty days from the date of the order appealed against (4th Schedule, Group E, Serial No. 52). The decision of the Collector will be final, except that it is open to revision by the Board under section 185.

As to review Vide Secs. 183 and 184.

Court-fee :—The Court fee payable on an application under this section is eight annas [The Court Fees Act VII of 1870, Schedule II, Art. 1, clause (*b*)].

'Such fee as may be prescribed by the local Government :—The fee to be deposited with an application under this section shall be one rupee. The fee shall be paid by the Court into the Treasury and the Treasury r eceipt shall be filed with the record (Notification No. $\frac{1068}{\text{I}-375\text{F}}$ dated 12th April 1902, published in the Gazette of 19th April 1902, p. 251).

Rules for division, estimate, or appraisement of crop :—Vide appendix B.

106. (1) On receiving such application, the Court shall issue a written notice to the opposite party to attend on the date and at the time specified in the notice, and shall depute an officer by whom such division, estimate, or appraisement shall be made.

Procedure on such application.

(2) If the opposite party objects that the rent is not taken by division, estimate, or appraisement, or that no rent is payable, the officer deputed shall record the objection, but shall proceed as hereafter provided.

(3) If, on or before the date appointed, the dispute has not been adjusted, he shall call on each of the parties to appoint, and shall himself appoint, a resident of the neighbourhood, as an assessor to assist in the division of the produce, or the estimate, or appraisement of the crop.

(4) If either party fails to attend, or refuses to appoint an assessor, the officer deputed shall nominate an assessor on his behalf.

(5) The officer deputed shall record, and in making his award shall have regard to, the opinions of the assessors.

(6) In the case of a division of the produce, if the parties agree to the award, the division shall be made accordingly. If the parties do not agree to such division, and in all cases in which the rent is payable by estimate or appraisement of the standing crop, the officer deputed shall make an estimate of the value of the produce or crop and determine the rent payable. He shall then deliver his award and submit it with a report of his proceedings to the Court.

(7) The parties shall be at liberty to file objections to the award within one week after the day on which the award was delivered; and the Court shall hear such objections, and pass orders thereon, after such further inquiry (if any) as may appear to be necessary.

If an objection is filed that the rent is not payable by division, estimate, or appraisement, or that no rent is payable, and the Court upholds the objection, it shall set aside the award.

If any other objection is filed, the Court may modify or confirm the award as it thinks fit, and shall pass an order for the payment of the rent and costs (if any), and such order shall have the effect of a decree for arrears of rent.

This section corresponds to sec. 43, clauses (*b*), (*c*), (*d*) and (*e*) of Act XII of 1881.

Powers of the officer deputed :—Where under section 43 of the

N.-W. P. Rent Act, 1881, an officer is appointed to divide produce, or estimate or appraise standing crop as between a landholder and his alleged tenant such officer is not empowered to come to any decision as to the liability of the tenant to pay rent if such liability is denied. If, therefore, an officer appointed for the purposes of sec. 43 should take upon himself to determine any question as to the liability of the tenant to pay rent, his decision will not in any subsequent suit between the parties be *res judicata*. (*Har Narain Singh* v. *Ram Nihora Lal*, W. N., 1903,p. 40.) see also *Jafar Khan* v. *Ghulam Mohamed* W. N. 1903, p. 41.

The Select Committee in their report printed at page 72 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"In proceedings under this chapter cases occur in which it is objected that the rent is not payable in kind as alleged by the applicant under sec. 121 (now sec. 105), but in cash, or even that no rent at all is payable. No provision had been made in the Bill, as it originally stood for such cases, and the defect in the existing law in this respect has been noticed. The officer deputed cannot deal judicially with such a question, but the objection should be put on record by him with a view to its being considered, if necessary, by the Court larer on. It is, however, essential that the appraisement, etc. should be carried out at once, and should not be delayed until the objection has been disposed of by the Court. We have therefore redrafted sec. 122 (now section 106) so as to meet this difficulty".

Receipts for Rent.

107. Every tenant who makes a payment on account of rent to his landholder shall be entitled to obtain forthwith from the landholder a written receipt for the amount so paid signed by the landholder.

Right of the tenant to receipt for rent.

This section corresponds to sec. 48 of Act XII of 1881. and to sec. 56. of the Bengal Tenancy Act.

Tenant :—Vide sec. 4 (5) and notes thereunder, p. p. 16 to 19 *ante*.

'Rent' :—Vide sec. 4 (3) and notes thereunder, p. p. 12 to 15 *ante*.

'Landholder' :—Vide sec. 4 (5) and notes thereunder, p. p. 16 to 19 *ante*.

'Makes a payment on account of rent' :—The words used in sec. 48 of Act XII of 1881 were "for any sum of money paid" which limited the application of that section to payments made in money, but the words in this section apply to cases where rent is paid either in cash or kind. Vide sec. 4 (3), p. 12 *ante*.

Receipts how proved:—*Dakhilahs* should, as a general rule, be attested or proved by some oral evidence in the same manner as all other documentary evidence. But there is a special difficulty for a tenant to prove *Dakhilahs* which are drawn up by his Zamindar's agents and signed by them, more particularly of long past days. The tenant cannot be expected in every case to summon all the *Goomashtas* of his Zamindar for the past twenty or thirty years to attest his *Dakhilahs* He should be required in his examination to attest the *Dakhilahs* himself as far as he can (*Rajessure Dabia* v. *Shibnath Chatterjee*, 4 W. R., Act X, 41). A party is perfectly competent to prove the payment of rent by the production of the receipt and prove that it is the document which he received on paying the money ; he is not bound to summon the parties who signed the receipt to prove their signatures (*Raj Mahomed* v. *Banoo Rasmah*, 12 W. R., 34 ; *Madhub Chunder Chowdhry* v. *Rajah Promothonath Roy Bahadoor*, 20 W. R., 264 ; *Surja Kanta Acharjee* v. *Baneswar Shaha*, I. L. R., 24 Calc., 251). But some evidence of the genuineness of the receipts must be given (*Dumaine* v. *Botum Singh* 13 W. R., 462). Receipts of rent purporting to have been given by a former owner of a *jot*, are not admissible in evidence without proof as to the hand-writing of the parties who gave them, or some satisfactory accounts of the custody from which they came (*Woomesh Chunder Mookerjee* v. *Sreemutty Bama Dossee*, 7 W. R., 15). A court has every right to accept *Dakhilahs* tendered by a party, as undisputed documents, where the opposite party says that he is not prepared to deny their genuineness (*Indro Bhoosun Deb Roy* v. *Goluck Chunder Chuckerbutty*, 12 W. R., 350). Where a party filing *dakhilahs* deposed that the amounts of rent he had paid were according to the sums entered in the *Dakhilahs*, such statement was held not to prove the *Dakhilahs*, being merely a deposition to the fact of a certain payment of rent, and not to the authenticity of the documents filed (*Koylashnath Haldar* v. *Oomanath Roy Chowdhry*, 11 W. R., 170). Receipts signed by the landlord's agent, if shown to be authentic, are *prima facie* evidence of payment of rent, but not conclusive evidence (*Shaikh Ameer Buksh* v. *Yusoof Ali*, 22 W. R., 489).

'Signed by the landholder':—'Signature' includes mark or seal in cases where the person whose signature is required is illiterate, (vide U. P. of A & O General Clauses Act I of 1904, sec 4, clause (41).

The receipt should be signed by the whole body of landholders, or by an agent appointed to act on behalf of them all except where there is any local custom or special contract by which a cosharer in an undivided property is entitled to receive separately his share of the rent payable by a tenant [sec. 194, sub-sections (1) and (2)]. The receipt should be signed either by the landholder himself or by his

Karinda or agent authorized by him in this behalf (sec. 5). The authorization may be verbal or in writing—Where there are several joint landlords and a receipt has been given by only one of them, it is necessary for the Court before giving effect to the presumption arising under sec. 56, clause (4) of the Bengal Tenancy Act [Corresponding to sec. 108 (2) of this Act] to find affirmatively that the person by whom the receipt was signed was authorized by them all, either verbally or in writing, to grant it (*Gopinath Chakrabarti* v. *Umakanta Das Roy*, I. L. R, 24 Calc., 169).

Stamp duty :—Receipts given for any payment of rent by a cultivator or on account of land assessed to Government revenue are exempt from stamp duty [Indian stamp Act II of 1899, schedule I, Art 53, Exemption (*c*)]. Receipts granted to cultivators by owners of land not assessed to Government revenue, if for sums exceeding rupees twenty, should therefor, bear a stamp of one anna.

Compensation for refusing to deliver receipt :—Vide Sec. 110.

Appropriation of payments of rent :—Vide Sec. 109.

Contents of valid receipt.

108. (1) The receipt shall specify such of the following particulars as can be specified by the landholder at the time of payment, namely,—

(*a*) the names of the payer and payee ;

(*b*) the name of the village, with mahal or patti;

(*c*) the amount paid ;

(*d*) a description of the holding on account of which the rent has been paid ;

(*e*) the year and instalment to which the payment has been credited ;

(*f*) whether the payment has been accepted as a payment in full, or only on account ; and

(*g*) the date on which the rent is paid.

(2) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

This section corresponds to sec. 48 of Act XII of 1881 and to sec. 56 of the Bengal Tenancy Act.

The Select Committee in their report printed at page 72 of the N.-W. P. and O. Gazette, dated 22nd June, say :—"We have considered this section with section 56 of the Bengal Tenancy Act. The particulars specified in clauses (*c*) and (*e*) [now clauses (*d*) and (*f*)] are such as the landholders might be altogether unable to insert when the payment of rent is made. He is bound at any time and in any place on receiving payment to give a receipt forthwith, and sub-section (2) prescribes a severe penalty for failure to comply exactly with the provisions of sub-section (1). It is therefore necessary, in justice to the landholder, to insert the condition which is made in section 56, Bengal Tenancy Act, but which has been omitted in the Bill (though the provisions of that section have been adopted in other respects), viz., that the particulars given in the receipt shall be *such as can be specified by the landholder at the time of payment*, and we have inserted these words accordingly in sub-section (1)"

Sub-section (1) :—

"As can be specified by the landholder at the time of payment" :—These words show that before giving effect to the presumption arising under sub-section (2), the Court should be satisfied that the landholder has omitted to specify in the receipt such of the particulars mentioned in this sub-section as were within his knowledge at the time of payment. The burden of proving such knowledge lies on the tenant.

This section entitles every tenant to a receipt on payment of any rent (*Narendro Chandra Laheri* v. *Asmat-ulla*, 1 C. W. N., XIX).

Clause (d) :—

'A description of the holding' :—The object of these words is to identify the holding on account of which the tenant has made the payment (Report of the Select Committee, printed at page 72 of the N.-W. P. and O. Gazette, dated 22nd. June, 1901).

Clause (e) :—The object of sec. 48, Act XII of 1881 (corresponding to this section) is to ensure that a tenant gets a receipt for the full amount he pays, specifying the period or crop on account of which it is acknowledged to have been received. It does not require that the receipt shall specify the period or crop on account of which the payer claims that the rent is paid (*Chaudhri Bhagwan Singh* v. *Lachman*, S. D. B. R., No. 18 of 1892).

Dates for instalments of rent :—Vide appendix B.

Clause (f) :—"The insertion of the amount of the *demand* would give rise to many difficulties. Unless the landholder has the *patwari* at hand when the receipt is given, it would generally be impossible

for him to fill in this particular. Moreover the amount of the demand may be a matter of dispute between the parties. The main object is that the tenant should have information as to whether the payment made by him has been accepted as in full of all demands or only as a payment on account, so that he may take action, if necessary, forthwith. We have redrafted clause (*f*) accordingly." (Report of the Select Committee, printed at page 72 of the N.-W. P. and O. Gazette, dated 22nd. June, 1901).

Sub-section (2) :—When there are several joint landholders and a receipt has been given by only one of them, it is necessary for the Court before giving effect to the presumption arising under sec. 56, clause (4), of the Bengal Tenancy Act [corresponding to sec. 108 (2) of this Act] to find affirmatively that the person by whom the receipt was signed was authorized by them all, either verbally or in writing, to grant it (*Gopinath Chakarvarti* v. *Umakanta Das Roy*, I. L. R., 24 Calc., 169).

'Date on which receipt was given' :—*i.e.*, the date on which the rent was paid, because under sec. 107 receipt must be given forthwith by the landholder, and consequently the date of the receipt will be the date on which the rent was paid. In cases where receipt has not been given at the time of payment of rent, but subsequently, the receipt will be presumed to be an acquittance in full of all the demands for rent up to the date on which the rent was paid and not up to the date on which receipt was actually given.

Payments on account of instalments.

109. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and the instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited on account of any arrear not barred by limitation that the landholder thinks fit.

This section is new and corresponds to sec. 55 of the Bengal Tenancy Act.

Appropriation of payments :—The law as to appropriation of payments is laid down in secs. 59, 60 and 61 of the Indian Contract Act (IX of 1872) upon which the present section is founded. Those sections run as follows :—

Sec. 59 :—Where a debtor, owing several debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Sec. 60 :—Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Sec. 61 :—Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Sub—section (1) to sec. 109 of this Act corresponds to sec. 59 of the Contract Act, and sub-section (2) to sec. 109 corresponds to sec. 60 of the Contract Act, with this difference that the debt on account of which the payment is credited must, under sub-section (2) to sec. 109, be not barred by limitation, while under sec. 60 of the Contract Act it may be credited to any debt whether it is barred by limitation or not. The Select Commitee in their report printed at P. 73 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"We consider that the landholder should not have the option of crediting any payment to an arrear of rent barred by limitation. The right of the tenant to appropriate his payment has been admitted : even when the tenant has made no express declaration on the point, it cannot be imagined that his intention is that his payment should be credited to a debt which is no longer recoverable by suit. We have therefore amended sub-section (2) accordingly."

It is open to a court which has to deal with the facts of a case, to say whether the receipts, which extend over a number of years together, and having regard to the fact that the receipts do not specify the years to which the amounts relate, the amounts paid in any particular year were partly for the rents of that year and partly for the arrears due in respect of previous years (*Surja Kanta Acharjee* v. *Baneeswar Shaha*, I. L. R., 24 Calc, 251). The payment in each year must be presumed to be for the current year and surplus payments to be for past and not subsequent years (*Tara Monee Dosse* v. *Kally Churn, Surmah*, W. R., 1864, Act X, 14). In a suit by a landlord against his tenant for arrears of rent due for a portion of the year 1283 (1876), the defendant pleaded payment and called as his witness the plaintiff's agent, who admitted the receipt of

certain payments from the defendant's under-tenants during the time for which the arrears were demanded ; but swore that they were payments made in respect of arrears due on account of previous years. *Held*, that the defendant having pleaded payment was bound to prove that the admitted payments were in respect of that portion of the year 1283 for which the arrears were claimed (*Bibee Syefun* v. *Rudder Sahay* I. L R., 7 Calc, 582). If a ryat shows payment of rent for 1265 and 1266, it is to be presumed that all previous claims have been satisfied. To entitle the landlord to carry to the credit of 1264 any of the payments made in 1266, he must show that at the close of 1264 there was an arrear due to him (*Ranee Sooruth Soonderee Dabee* v. *K. Brodie* 1 W. R., 274).

110. If a landholder without reasonable cause refuses to deliver to a tenant a receipt containing the particulars hereinbefore prescribed for any rent paid by him, or to credit the rent paid to the year and instalment to which the tenant has requested the payment to be credited, the tenant shall be entitled to recover from him such compensation not exceeding double the amount or value of the rent paid as the Court thinks fit to decree.

Compensation for refusing to deliver a receipt or to credit as requested.

This section corresponds to sec. 48 of Act XII of 1881 and to sec. 58 (1) of the Bengal Tenancy Act.

This section would not apply to cases where a receipt is given without specifying the particulars mentioned in section 100 (1) ; in such case the tenant will not be entitled to any compensation under this section, but such receipt will be presumed to be an acquittance in full of all demands for rent up to the date on which the receipt was given [sec. 108 (2)].

Refuses :—In the Bill as originally drafted, printed in the N.-W. P. & O. Gazette, dated 17th November, 1900, before the word 'refuses' were the words 'neglects or.' But the Select Committee omitted these words with the following remarks :—" The use of the word 'neglect' would render a landholder liable to penalties if he has received payments by money-order and his tenant has accepted the receipt received through the post office as sufficient, and demanded no further receipt. It is the *refusal* to give a receipt which the tenant has directly or indirectly demanded that alone should render the landholder liable to penalty" (vide report of the Select Committee printed at page 73 of the N.-W. P. & O. Gazette, dated 22nd June, 1901).

'Tenant' :—When a landholder receives rent from a person whose name has not been registered and thus recognises him as his tenant, he renders himself liable to the penalty provided for by sec. 58 of the Bengal Tenancy Act (corresponding to this section) if he refuses to deliver a receipt without reasonable cause (*Narendra Chundra Lahiri* v. *Asmatulla*, 1 C. W. N., XIX).

'Particulars hereinbefore prescribed' :—vide sec. 108 (1).

'For any rent paid by him' :—Compensation is recoverable only in respect of money actually paid as rent (*Sumeena Beebee* v. *Koylash Chunder Roy*, 6 W. R., Act X, 79).

'As the Court thinks fit to decree' :—The power of a Court to award damages for receipts withheld is discretionary only as to the amount to be awarded (*Zumeeroodunnissa Khanum* v. *Clement John Phillipe*, 1 W. R., 290). Where money is actually paid as rent and the necessary receipt is withheld the case is not one of *injuria sine damnis*, but one in which the law gives the Court discretion to award any sum as damages not exceeding double the amount for which the receipt is withheld (*Joheerooddeen Mahomed* v. *Dabee Pershad Singh*, 13 W.R., 391).

Costs :—The tenant being entitled by law to double the amount paid as rent, the Court cannot refuse him costs on the ground that he had demanded double of what was due to him (*Zumeeroodinnissa Khanum* v. *Clement John Phillipe*, 1 W. R., 290).

Limitation, Jurisdiction, suit, appeal, review and revision :—Suits under this section for compensation for refusing to credit the rent paid as requested by the tenant should be brought within three months from the date of the refusal (4th Schedule, Group A. Serial No 3).

(1). Suits under this section in which the value of the subject matter does not exceed one hundred rupees should be filed in the Court of the Tahsildar [sec. 174 (*a*)]. An Assistant Collector of the second class has power to dispose of such suits (sec. 171). An appeal will lie to the Collector from the decree of an Assistant Collector of the second class in such suits sec. 176 (*a*)] within thirty days from the date of the decree appealed against (4th schedule, group E, serial No. 52). A second appeal will lie within thirty days from the date of the decree appealed against (Indian Limitation Act Second Schedule, second Division, Art. 152) to the District Judge from an appellate decree of the Collector in such suits, if a question of jurisdiction has been decided [sec. 180 (2]. The decision of the Judge will be final, as no appeal will lie to the High Court from the decree in appeal of a District Judge under sec. 182, that section allowing only a second appeal and not a third one. If, however, no appeal can be preferred to the District Judge on account of the case

not coming under the provisions of sec. 180 (2), an application for revision may be made to the Board under sec. 185.

(2) Suits under this section in which the value of the subject matter exceeds one hundred rupees should be filed in the Court of the Assistant Collector in charge of the sub-division; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 *b*)]. Such suits may be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [sec. 180 (1)] will lie to the District Judge within thirty days from the date of the decree appealed against (The Indian Limitation Act, Schedule II, second Division, Art. 152) if the amount or value of the subject matter does not exceed five thousand rupees; provided that when the amount or value of the subject matter of the suit exceeds five thousand rupees, the appeal will lie to the High Court (sec. (77) within ninety days from the date of the decree appealed against (Indian Limitation Act Schedule II, second Division, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a District Judge in accordance with the provision of Chapter XLII of the Code of Civil Procedure (sec. 182) within ninety days from the date of the decree appealed against.

As to review vide secs. 183 and 184.

As to revision vide sec. 185.

Court fee :—The Court fee payable on a plaint or memorandum of appeal will be computed according to the amount claimed [The Court Fees Act VII of 1870, sec. 7 (*i*)].

Deposit of Rent in Court.

111. In any of the following cases, in which a money rent is due, namely,—

Application to deposit rent in Court.

(*a*) when a tenant tenders to a landholder full payment of the rent due from him, and the landholder refuses to receive it, or intimates his unwillingness to grant a receipt for it;

(*b*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the

money, and no person has been empowered to receive the rent on their behalf;

(*c*) when two or more persons severally claim the right to collect the rent, or when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent;

the tenant may make an application in writing to the Court for permission to deposit in Court the full amount of rent then due.

This section corresponds to secs. 50 and 55 A of Act XII of 1881 and to sec. 61 (1) of the Bengal Tenancy Act.

Clause (*a*)

'Tenders':—Under sec. 38 of the Indian Contract Act IX of 1872 'where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the Contract. Every such offer must fulfil the following conditions. (1) It must be unconditional. (2 It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do. (3) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

In *Startup* v. *Macdonald* (6 Manning and Granger's Reports, C. P., 610) Rolfe, B., said as follows :—

"In every contract by which a party binds himself to deliver goods, or pay money, to another, he, in fact, engages to do an act which he cannot completely perform without the concurrence of the party to whom the delivery or the payment is to be made. Without acceptance on the part of him who is to receive, the act of him who is to deliver or to pay can amount only to a tender. But the law considers a party who has entered into a contract to deliver goods or pay money to another as having substantially performed it, if he has tendered the goods or money to the party to whom the delivery or payment was to be made" (Cunningham & Shephard's Indian Contract Act, 8th Edition, p. 139).

The tender need not be made by the tenant himself unless there be a contract to the contrary. Under sec. 40 of the Indian Contract Act "if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it."

A mistake in the name of the *Talook* is immaterial, specially when there is no doubt that Talookdar was aware of the tender being made (*Wooma Churn Sett* v. *Huree Pershad Misser*, 10 W. R., 101). A ryot's tender of payment to be valid must be made at the proper place and to a person authorized to receive the same (*Eshan Chander Roy* v. *Khajah Assanoollah*, 16 W. R., 79). A party is not entitled to benefit from a deposit if it was paid in without a tender to and refusal by the opposite party (*Kristo Protibar* v. *Alladinee Dassee*, 15 W. R, 4). Tenants who have been in the habit of depositing in court the rent due to a landlord in his sole name, are not justified, without receiving notice or order to that effect, in making the deposit in the joint names of that landlord and another (*John Rudd Rainey* v. *Nubo Coomar Mookerjee*, 24 W. R., 128).

"According to English law, in order to constitute a sufficient tender of money in payment, there must be actual production of the money, unless expressly or impliedly the person to whom the tender is made dispenses with such production. Lord Mansfield considered that the production of the money was important as being likely to influence the creditor. A sufficient tender of money is not made if the money is locked up in a box which the other party is not allowed to open (Cunningham & Shephard's Indian Contract Act 8th Edition, page 139).

As to coins in which legal tender can be made vide secs. 12 to 15 of the Indian Coinage and Mint Act No. XXIII of 1870 which run as follows :—

12. No gold coin shall be a legal tender in payment or on account.

13. The said rupee and half rupee shall be a legal tender in payment or on account :

Provided that the coin has not lost more than two per cent in weight :

Provided also that it has not been clipped or filed, or defaced or diminished, otherwise than by use.

The quarter rupee and eighth of a rupee shall be legal tender only for the fractions of a rupee, subject to the second proviso contained in this section.

14. The double pice shall be a legal tender for the thirty-second part of a rupee or for half an anna ;

the pice for the sixty-fourth part of a rupee or for one fourth of an anna ;

the half pice for the one hundred and twenty-eighth part of a rupee or for one-eighth of an anna ;

and the pie for the hundred and ninety-second part of a rupee or for one-twelfth of an anna ;

Provided that none of the said copper coins shall be a legal tender, except for the fractions of a rupee.

15. All silver coins of the weight and standard specified in the Acts No. XVII of 1835, No. XXI of 1838, and No. XIII of 1862, issued since the passing of those Acts, respectively, and declared by those Acts, respectively, to be a legal tender,

and all copper coins of the weight specified in Acts No. XXI of 1835, No. XXII of 1844, and No. XIII of 1862, issued since the passing of those Acts respectively, and declared by those Acts, respectively, to be a legal tender,

shall continue to be a legal tender for the amounts thereof, respectively, subject to the same conditions and provisions and under those Acts, respectively, anything contained in this Act or in any Act hereby repealed notwithstanding.

As to the time at which tender should be made there is no specific provision in this Act. But in sec, 54 (1) of the Bengal Tenancy Act it is provided that every tenant shall pay each instalment of rent before sun set of the day on which it falls due. The above section of the Bengal Tenancy Act follows the English rule that a payment or tender in order to be valid must be made before sunset. In the absence of any specific provision in this Act as to the proper time of payment or tender, the English rule will be followed.

"Full payment of the rent due" :—These words mean nothing more than the words "what he shall consider the full amount of rent due from him at the time of the tender to the Zamindar" and have no relation whatever to the amount of rent *justly* due or *justly* payable by the tenant (*Sridhar Roy* v. *Rameswar Sing*, I. L. R., 15 Calc., 166). The tenant may tender only what he may consider to be the full amount of rent due from him (*Shaikh Ahmed Hossein* v. *Shaikh Keramut*, 8 W. R., 353). The rent would also include any interest payable by the tenant at the time of the tender. A decree holder is not bound to accept a sum in part satisfaction of his decree. He is entitled to require payment of the principal and interest in full ; and the refusal to receive a part of what is due to him will not deprive him of his right to interest (*Kunhya Singh* v. *Tooydum Singh*, 7 W. R., 20). The deposit contemplated by this section is a deposit after the rents have

become due and not before they are due (*Tara Monee Koonwaree* v. *Jeebun Mundur*; *Jeebun Mundur* v. *Tara Monee Koonwar*, 6 W. R., Act X, 98). A payment or deposit of rent, though not made by the tenant himself but by a transferee on his behalf, is a valid deposit (*Bihari Lal Mukhurji* v. *Basarat Mandal*, I. L. R., 25 Calc., 289).

When a tenant entertains a *bona fide* doubt as to who is entitled to receive his rent, and deposits it in court under the provisions of this section, his deposit operates as an acquittance, and when such a deposit is proved as a defence to a suit for rent, the suit should be dismissed, and when the defendant is not to blame for the litigation, he is entitled to his costs (*Stalkartt* v. *Guru Das Kundu*, I. L. R., 21 Calc., 680).

Clause (C) :—Limitation, Jurisdiction, application, appeal review and revision :—There is no period of limitation for applications under this section (4th Schedule, Group, D, Serial No. 111).

Applications under this section for permission to deposit rent should be filed in the Court of the Tahsildar [sec. 174 (*a*)]. An Assistant Collector of the second class is empowered to dispose of such applications (sec. 171). Applications under this section may be disposed of *ex-parte* [sec. 193 (*b*)]. An appeal will lie from an order of the Assistant Collector of the second class on an application under this section [sec. 176 (*b*)] within thirty days from the date of the order appealed against (4th Schedule, Group E, Serial No. 52). As to review vide secs. 183 and 184. As to revision vide sec. 185.

Court-fee :—The Court-fee payable on an application under this section will be eight annas [Schedule II, Art. 1 (*b*), Act No. VII of 1870]. The Court-fee payable on a memorandum of appeal from an order on an application under this section will also be eight annas [Schedule II, Art. 11 (*a*), Act No. VII of 1870].

May make an application :—When the tender of a tenant has been refused it is optional with the tenant either to deposit the rent in Court or not. The law does not forbid the Court to advert or give effect to a tender not followed by a deposit or payment into court of the money (*Bissonath Deb* v. *Hurro Pershaud Chowdhry*, 2 W. R., Act X, 88). A valid tender, even without deposit in Court of the rent will operate as a bar to a claim for interest for non-payment and for costs in any suit to recover the amount. Although as a general rule the amount of a tender not accepted ought to be paid into Court in order to entitle the defendant to costs, yet if the tender amounts to payment, the defendant is entitled to have the suit dismissed with costs (*Bolye Chund Sing* v. *Monlard*, I. L. R., 4 Calc, 572).

Rules for deposit of rent :—Vide appendix B.

Contents of application.

112. (1) The application shall contain a statement of the grounds on which it is made and shall state–

in case (*a*), the name of the person to whose credit the deposit is to be entered ;

in case (*b*), the names of the co-sharers to whom the rent is due ; and

in case (*c*), the names of the person or persons to whom rent was last paid and of the person or persons now claiming it.

(2) The application shall be verified as a plaint and shall be accompanied by such fee as the Local Government may by rule direct.

This section corresponds to sec. 51 of Act XII of 1881 and sec. 61 (2) of the Bengal Tenancy Act.

Sub-section (1) :—Tenants who have been in the habit of depositing in Court the rent due to a landlord in his sole name, are not justified without receiving notice or order to that effect, in making the deposit in the joint names of that landlord and another (*John Budd Rainey* v. *Nubo Coomar Mookerjee*, 24 W. R., 128).

Sub-section (2) :—

'Shall be verified as a plaint' :—As to how plaint should be verified vide sec. 52 of the Code of Civil Procedure.

Such fee as the local Government may by rule direct :—The fee which under sec. 112 (2) of the N.-W. P. Tenancy Act, 1901, shall accompany an application, under sec. 111 of that Act, shall be a fee of one rupee, levied in the form of a Court Fee stamp affixed to the application in addition to the fee proper for such application under the Court-Fees Act 1870 Notification No. $\frac{1101}{I-285F}$, dated 15th April, 1902, published in the Gazette dated 19th April, 1902, page 251).

Rules for deposit of rent :—Vide appendix B.

Receipt to be granted.

113. If it appears to the Court to which an application under the provisions of section 111 is made that the applicant is entitled under that section to deposit the rent,

it shall receive the rent and give a receipt for it under the seal of the Court.

This section is new and corresponds to sec. 62 (1) of the Bengal Tenancy Act.

Duty of Court and rights of landholder :—"Section 61 of the Bengal Tenancy Act (corresponding to secs. 111 and 112 of this Act) lays down the case in which a tenant may present to the Court an application for permission to deposit his rent, as also the particulars which the petition is to contain. Section 62 (corresponding to sec. 113 of this Act) provides that, if it appears to the Court that the applicant is entitled to make the deposit, it shall receive the rent and grant the receipt. It would appear upon a consideration of these two sections that, if a verified application is made to the Court, and if it contains the grounds under which an application under sec. 61 is authorized to be made, and if it also contains the particulars which must be mentioned, the Court is bound to receive the rent and grant a receipt to the tenant. The Court is not authorized at this stage of the proceedings, or at any subsequent stage, to enter into a judicial enquiry as to whether sufficient grounds in law exist entitling the tenant to make the deposit. We then find that, under sec. 63 (corresponding to secs. 115 and 116 of this Act), the Court is to affix a notification in the Court-house on the receipt of the money; and if it is not paid away within the period of fifteen days, a notice of the receipt of the said deposit is to be served upon the Zemindar; and under sec. 64 (corresponding to sec. 117 of this Act) the Zemindar may apply if he pleases to receive the amount deposited. These are the only provisions which the Bengal Tenancy Act has laid down in regard to the deposit made by a tenant; and it will be observed that there is no machinery whatsoever provided for the Court to enter into a judicial enquiry in connection with the matter of this deposit, nor is there any provision entitling the Zemindar to come in and to be heard, upon the subject. And it seems to us that, so far as the tenant is concerned after the deposit is made and receipt granted, the Court is *functus officio*, and is not authorized to return the money to the tenant upon an application made by the Zemindar. It was strongly pressed upon us that when in sec. 61 the Legislature uses the words 'the full amount of the money then due' [corresponding to the words 'full payment of the rent due' in sec. 111 (*a*) of this Act], and in sec. 62 (corresponding to sec. 114 of this Act) 'the amount of the rent payable by the tenant,' it intends that it is only in cases where there is no dispute as to the amount of rent of the holding that the tenant is entitled to deposit the rent, and the Court is

authorized to receive such deposit; and that the receipt granted by the Court operating as an acquittance as against the landlord for the amount of the rent payable and deposited by the tenant, it would be apparent injustice to the zemindar, if he was not entitled to come in and to be heard, upon the matter. But it seems to us that this contention cannot be maintained. The words 'the full amount of the money then due' as they occur in sec. 61 do not, as we read them, mean anything more than the words 'what he shall consider the full amount of rent due from him at the date of the tender to the zemindar' as they occur in sec. 46 of Bengal Act 8 of 1869, which has now been repealed by the Bengal Tenancy Act. The provisions entitling a tenant to deposit his rent in court were introduced.....with a view to protect tenants from harrasment by zemindars and to save them from costs, interest and damages being awarded against them in a suit by the Zemindar for rent; and it appears to us that the words in sec. 61 and sec. 62 of the Bengal Tenancy Act referred to above have no relation whatever to the amount of rent *justly* due or *justly* payable, but only to such rent as the tenant at the time of the deposit considers to be the rent due and payable. It is entirely at the option of the zamindar either to receive the rent deposited or not just as he pleases. He may, if he objects to the amount of rent payable by the tenant for his holding bring a suit under sec. 158 of the Act (corresponding to sec. 95 of this Act) to have that matter determined or he may bring a suit for the recovery of the whole of the arrear of rent due to him, ...disregarding altogether the deposit made by the tenant.....Upon these considerations it seems to us clear that when a deposit is made by a tenant, and the Court grants him a receipt the Zamindar cannot, in any way, be prejudiced, and that the tenant makes such deposit at his own risk" (*Sirdhar Roy* v. *Rameswar Sing*, I. L. R., 15 Calc. 166, at p. p. 168 to 170).

Receipt a valid acquittance.

114. A receipt given under the last preceding section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

In case (*a*) of section 111, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case *(b)* of that section, by the co-sharers to whom the rent is due;

in case (*c*) of that section, by the person entitled to the rent.

This section is new and corresponds to sec. 62 (2) of the Bengal Tenancy Act.

Acquittance:—The deposit of rent in Court under sec. 61 of the Bengal Tenancy Act (where the tenant entertains a *bona fide* doubt as to who was entitled to receive it) operates as an acquittance; and where such deposit is proved as a defence to a suit for rent, the suit should be dismissed (*Stalkartt* v. *Guru Das Kundu Chowdhry*, I. L. R., 21 Calc., 680).

Receipt given under sec. 113 operates as an acquittance only for the amount payable by the tenant *and deposited* and not as an acquittance in full of all demands for rent up to the date on which the receipt was given as would be the case under the provisions of sec. 108 (2).

Notification of deposit.

115. The Court receiving the deposit shall forthwith cause to be affixed at a conspicuous place at the Court-house, and in the vernacular language of the district, a notification of the deposit of such rent, containing the name of the tenant, the name of the landholder, the amount of rent deposited, and any other material particulars.

This section is new and corresponds to sec. 63 (1) of the Bengal Tenancy Act.

Notice to whom sent.

116. If the amount of deposit is not paid away under the next following section within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in case (*a*) of section 111, cause a notice of the receipt of the deposit to be served free of charge on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*b*) of that section, cause a notice of the receipt of the deposit to be posted at the landholder's village office or residence, or in some conspicuous place in the village in which the holding is situate ; and

in case (*c*) of that section, cause a notice to be served on every person who it has reason to believe claims or is entitled to such deposit.

This section corresponds to sec. 53 of Act XII of 1881 and to sec. 63 (2) of the Bengal Tenancy Act.

Service of notice :—Vide sec 193 (*f*).

Fee for issue of notice :—No fee shall be levied in respect of any notice issued under sec. 116 (Notification No. $\frac{1101}{I-285F}$, dated 15th April 1902, published in the Gazette, dated 19th April 1902, p. 251. See also Appendix B).

Payment or refund of deposit.

117. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, and shall, if the deposit has been made under clause (*c*) of section 111, except upon the joint application of the disputing parties, retain the amount pending a decision of the Civil Court as to the person so entitled.

(2) The payment may, if the Court so directs, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil or Revenue Court to the contrary, be repaid to the depositor on his application and on his returning the receipt given by the Court with which the rent was depo-

sited, or on his producing such other evidence of his having made the deposit as the Court may consider sufficient.

This section corresponds to sec. 54 and 55 of Act XII of 1881 and to sec. 64 of the Bengal Tenancy Act.

If the tenant who deposited the rent be dead, the sum deposited may be returned to his legal heir [vide sec. 4 (1)].

Limitation, Jurisdiction, application, appeal, review and revision: —There is no period of limitation for application under this section (4th Schedule, Group D, serial No. 45).

Application under this section for payment or refund of rent deposited under sec. 111 should be filed in the Court of the Tahsildar [sec. 174 (a)] and would be disposed of by an Assistant Collector of the second class (sec. 171). Such applications may be disposed of *ex-parte* [sec. 193 (b)] An appeal will lie to the Collector from an order of an Assistant Collector of the second class on such applications [sec, 176 (b)] within thirty days from the date of the order appealed against (4th Schedule, group E, serial No. 52).

As to review vide secs. 183 and 184.

As to revision vide sec. 185.

Court-fee :—It the amount or value of the subject matter is less than fifty rupees the Court fee leviable will be one anna [The Court Fees Act VII of 1870, schedule II, Art. I (*a*)]. If the amount or value of the subject matter exceeds fifty rupees the Court fee will be eight annas [The Court Fees Act VII of 1870, schedule, II, Art. 1 (*b*)]. The memorandum of appeal should bear a Court fee stamp of eight annas [The Court Fees Act VII of 1870, schedule II, Art. 11 (*a*)].

Barring of suits.

118. No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of Government, in respect of anything done by a Court regarding a deposit under the foregoing sections ; but nothing in this section shall prevent any person, entitled to recover the amount of such deposit, from recovering the same from a person to whom it has been paid under the last preceding section.

This section corresponds to sec. 55 A of Act VII of 1881 and to sec. 64 (4) of the Bengal Tenancy Act.

CHAPTER IX.

DISTRAINT.

Landholder's Right of Distraint.

Recovery of arrears by distraint.

119. The produce of all land in the cultivation of a tenant shall be deemed to be hypothecated for the rent payable in respect of such land by such tenant and by every person intermediate between such tenant and the proprietor; and, until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of a decree of a Civil or Revenue Court, or otherwise.

(2) When an arrear of rent is due from a tenant the landholder may, in lieu of, or in addition to, suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due.

(3) Nothing in this section shall be deemed to affect the provisions of sections 2, 3, and 4 of Regulation VI of 1823, or of section 11 of Act XIII of 1857.

This section corresponds to sec. 56 of Act XII of 1881.

Sub-section (1) :—

'Produce':—The word produce has not been defined by this Act; but sec. 121 (1) shows what may, be distrained. The term 'produce of land' means that which can be gathered and stored—crops of the nature of cereal, or grass, or fruit-crops; it does not apply to the trees from which the crops, if fruit-crops, are gathered (*Sheo Pershad Tewari* v. *Moleema Bebee*, 1 N. W. P., 53). Trees are not the produce of land (*Bechai Lal* v. *Tika*, W. N., 1884, p. 135; *Khaman Singh* v. *Bala Bakhsh*, W. N., 1884, p. 152; *Shanker Sahai* v. *Din Dial*, W. N., 1890

p. 145). Indigo and poppy crops are excepted from distraint [vide sub-section (3)].

'**Shall be deemed to be hypothecated**' :—The produce of the land is by law hypothecated for the rent payable in respect thereof, but not the land itself (*Tirthanund Thakoor* v. *Paresmon Jha*, 13 W. R., 449). The purchaser of unstored produce of land in the occupation of a cultivator, with notice of the lien created on such produce by sec. 56 of Act XVIII of 1873 corresponding to this section), takes such produce subject to such lien (*Kinlock* v. *The Collector of Etawa*, I. L. R., 3 All ; 433 ; *Achul* v. *Gunga Pershad*, 2 Agra, 73). Where tenant has sub-let his holding to a *shikmi* or sub-tenant it was held that, under sec. 112 of Act X of 1859, the produce of the land was hypothecated for the rent payable in respect thereof, and that the crops cultivated by the sub-tenant were distrainable by the Zamindar (*Jeetum Sing* v. *Buldeo Kahar* 4 N.-W. P., 76). Where a tenant entitled to mortgage his holding does mortgage it, the landholder, in the event of his rent being in arrear, is entitled to distrain the crops grown upon the land by such mortgagee, sec. 56 of Act XII of 1881, giving the landholder a right to distrain any crops growing upon the land, by whomsoever grown, in respect of which the arrear arises (*Fatima Begam* v. *Hansi*, I. L. R., 9 All., 244, W. N., 1887, p. 29).

'**For the rent payable in respect of such land**':—This has been held to apply not only where there is rent in arrear due from the cultivator to his landlord, but also where rent is accruing due in respect of the period during which the produce was being grown (*Jagan Nath Prasad* v. *Bhika Ram*, I. L. R., 15 All., 375 ; W. N., 1892, p. 122). A Full Bench of the Punjab Chief Court has held that section 12 (1) of the Punjab Tenancy Act [corresponding to sec. 119 (1) of this Act] was intended to give the landlord a lien upon the produce of a tenancy for a particular harvest, in respect of not only the rent due for that harvest, but also the arrears of rent due for previous harvests, the words "rent for the time being payable" in that section meaning rent which has accrued due, and which is just accruing due (C J. No. 54, P. R., 1895). The rule that standing crops are deemed to be hypothecated for the rent, refers only to the rent then payable in respect of such land ; and the rule, which secures the landholder's claim for his rent, does not necessarily imply a right in the tenant to insist on his landlord appropriating part of the value of a crop to the security of a possible future arrear of rent, rather than to the extinction of an existing debt due to the landlord, in satisfaction of which the landlord has attached the produce. (*Naikram Singh* v. *Murli Singh*, W. N , 1885, p. 662). An arrear of rent is not due until the rent itself has been determined (*Komul Lochun Roy* v.

Moran & Coy, 2 W. R., Act X, 82); and consequently there can be no distraint until the rent has been determined.

No distraint can be made in respect of any arrear which has been due for a longer period than one year [sec. 120 (d)], or in respect of any arrear for which security has been accepted by the landholder [sec. 120 (*e*)]

The remedies which are provided by the Rent Law for enforcing the payment of rent by distress are remedies *in rem*. The personal liability of one tenant cannot be transferred to another (*Rash Behary Bundopadhya* v. *Peary Mohun Mookerjee*, I. L. R., 4 Calc., 346).

'By every person intermediate between such tenant and the proprietor':—These words show that even the crops raised by a sub-lessee may be distrained by the proprietor. The crops cultivated by a sub-tenant are distrainable by the landlord of the tenant-in-chief (*Khedan Bindh* v. *Shankar Ram*, 3 L. R., R. R. S., 32; *Jeetum Sing* v. *Buldeo Kahar*, 4 N.-W. P., 76). Held on a construction of section 56 (corresponding to this section) of Act No. XII of 1881, that when the rent of a tenant is in arrears the landlord is entitled to distrain any crop growing on the tenant's holding, no matter by whom that crop was sown. (*Megh Singh* v. *Tika Ram*, W. N. 1901, p. 182).

'And until such rent.....Revenue Court or otherwise':—This section only prohibits sale in execution of a decree, and not attachment. If the produce has been attached before distraint, the landholder may apply under sec. 278 of the Code of Civil Procedure to have the attachment set aside; or if the Court is satisfied that the produce is subject to a lien in favour of the landholder, and thinks fit to continue the attachment, it may do so, subject to such lien (sec. 282 of the Code of Civil Procedure). When any conflict arises between the rights of a distrainer and of a person attaching or selling the same property in execution of a decree of a Civil or Revenue Court, the right of the distrainer will prevail (sec. 148). A person who, in execution of a decree against a tenant, attaches and brings to sale the crops or other products of the land in the occupation of his judgment-debtor, which are liable to be distrained by the landholder for rent payable in respect of such land, with notice of the landlord's claim under sec. 56 of Act XII of 1881 in respect of such crops or products, and becomes the purchaser thereof, is liable to the landholder in a suit for damages (*Shere Singh* v. *Kuri Mal*, W. N., 1882, p. 51). B, who held a decree for money against G, a cultivator, brought to sale in execution of his decree the produce of certain land occupied by G, and such produce was purchased by S. The landholder to whom G owed rent for land, sued G and S for the amount of the rent, on the ground that under sec. 56 of the N.-W. P. Rent Act the produce of the land was hypothecated for the rent. *Held* that the defendant

could only be held responsible *ex delicto* and the suit was therefore one for damages (*Shibba* v. *Hulasi*, I. L. R., 5 All., 518 ; W. N., 1883, p. 114).

Who may distrain :—Joint landlords cannot distrain except collectively or through a common agent [sec. 194 (1)] who must be expressly authorized by power of attorney in that behalf [sec. 120(*f*)]. A servant of a person empowered to distrain cannot distrain unless he has written authority to do so [sec. 120(*g*)]. A co-sharer not entitled to collect the whole of the rent from a tenant cannot distrain [sec. 120(*a*], nor can a landholder who has covenanted not to distrain [sec. 120(*b*)]. An executor or administrator has the same power to distrain for all rents due to him at the time of his death as the deceased had when living [sec. 267 of the Indian succession Act X of 1865]. An asignee of arrears of rent cannot distrain. Not only the immediate landholder of the tenant whose crops are distrained can distrain, but the proprietor and every person intermediate between such tenant and the proprietor can also distrain [sec. 119(1)]. Where a tenant has sub-let, the crops cultivated by the sub-tenant are distrainable by the landholder of the tenant-in-chief for arrears due from the tenant in chief [*Jeetum Sing* v. *Buldeo Kahar*, 4 N. W. P., 76 ; *Khedan Bindh* v. *Shankar Ram*, 3 L. R., R. R. S., 32 ; vide also sec. 123(2)]. Where land is sub-let and any conflict arises between the claims of a superior and inferior landholder who distrain the same property the claims of the superior landholder will have priority [sec. 147(3)].

What may be distrained :—Vide sec. 121. See also notes on "Produce" under sub-section (1). Unripe crops may also be distrained [Vide sec. 121 (1) (*a*) ; see also notes on "Tended" under sec. 124, sub-section (1)]. A landholder cannot distrain any produce, of the whole or any portion of which a previous distraint has been made by him [sec. 120(*c*).

Sub-section (2) :—

'In addition to suing' :—These words show that a suit will lie for the balance where the whole of the rent due in respect of any land has not been realized by distress and sale of the crops standing thereon. (*Thakur Bhola Nath* v. *Bhima*, *Rev. L. J.* p. 18., No. 3 of 1900).

A landholder distrained the crops of his tenant for arrears of rent. Thereupon the tenant instituted a suit to contest the distraint. It was found that at the time the suit was instituted the crops which had been distrained had ceased to exist, having been destroyed by fire. The Assistant Collector trying the suit held that the distraint was groundless as the arrears claimed were not due. The landholder subsequently instituted a suit against the tenant to recover the arrears of rent for which he had formerly distrained. *Held* that the fact that, at the time the former suit was brought, the crops had ceased to exist, was a fatal ground of

objection to the maintaining of such suit in the Revenue Court. The Assistant Collector should have dismissed the claim as brought on the ground that the subject matter to which the special form of suit preferred by him related had ceased to exist, and that no effective order could be passed. The principle of *res-judicata* did not therefore apply to the second suit (*Radha Prasad Singh* v. *Annu Pandey*, W. N., 1882, p. 50). There is no legal bar to a Zamindar's distraining for the rent of the current year, and suing afterwards for arrears of a previous year (*Hur Suhai* v. *Thakoor Deen*, S. D. A., N. W. P., No. 10 of 1857, April 29th., 1857).

Sub-section (3) :—Secs. 2, 3, and 4 of Regulation VI of 1823 and 11 of Act XIII of 1857 run as follow :—

2. " If any person shall have given advances to a ryot, or other cultivator of the soil, under a written engagement, stipulating for the cultivation of indigo plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered to have a lien or interest in the indigo plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interests, and for the due execution of the conditions of the contract."

"3. *First.* If any person, who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual under engagement with him is evading or is about to evade the execution of his contract, by making away with and disposing of the produce otherwise than as stipulated, or that he has engaged secretly or openly to supply the same to another, it shall be competent to such person to present a petition of complaint to the zillah or city judge, or to a register exercising the powers of joint magistrate, within whose local jurisdiction the land stipulated to be cultivated with the indigo plant may be situated, filing with the same the original deed of engagement by which the produce may be assigned and engaged to be delivered to himself or at his factory, and certifying in his petition that such deed was voluntarily and *bona fide* executed by the individual complained against.

Second. On such petition and original deed of engagement being filed, a summons, or *tulub chithee*, shall be immediately issued through the nazir in the usual form, requiring the individual named in the petition to attend and answer to the complaint, either in person or by an authorized agent, within such specified period as may in each instance appear reasonable, and which period shall in no case exceed twenty days.

Summons how to be served.

Third—The officer entrusted with the collection of the process shall also be instructed to affix a copy of the summons in the village cutcherry, or other place of public resort, and to erect a bamboo on

the specific parcel of ground on account of which the claim may have been preferred, and which it shall be the duty of the plaintiff or his agent to point out. By these means sufficient public notice of the claim will be given to enable persons desirous of contesting the plaintiff's right, or of establishing a prior right to the produce of the land, to appear either in person or by an authorized agent before the Court for that purpose, and the failure so to attend, before the summary decision be passed, will be held to bar the claim of any third party founded on any contract for the produce of the land in question, unless it be established by a regular suit.

And public notice of the claim how to be given.

Fourth—If the officer serving the process shall not be able to execute it on the person of the defendant, he shall nevertheless publish the claim in the manner above directed, and if the defendant shall not appear to answer to the complaint within the period specified in the summons and no other claim be preferred in bar of that of the plaintiff, the Judge or other officer shall, after taking evidence to establish the deed and other allegations of the plaintiff, proceed to the adjudication of the claim, in the same manner as if the defendant had personally appeared.

On non-appearance of defendant or other claimants, evidence to be taken, and the case decided ex-parte.

Fifth—If the defendant or his authorized agent should attend within the period specified, and should deny the execution of the deed of engagement filed by the complainant, proof of the same shall be taken and if its voluntary execution be established to the satisfaction of the Court or other tribunal trying the case, and no preferable claim be established by a third party, a summary award shall be made, adjudging to the plaintiff the right of receiving the crop according to the terms of the agreement. The same principle shall be applied if the engagement be admitted, and no satisfactory reason be shown why the defendant should not be held to the performance of his contract.

In what cases an award shall be passed, adjudging the plaintiff's right to the produce.

Sixth.—If it be proved that the engagement was not duly and voluntarily executed by the defendant, or if it should appear that the proceeding is otherwise litigious and oppressive, and the claim unfounded, or that the plaintiff had no sufficient cause to warrant his application to the Court, the complaint shall be dismissed, and the plaintiff shall be made liable to the payment of costs, and such reasonable sum in addition as may seem to the Judge or other officer trying the case a proper compensation to

If the plaintiff's claim be not established, the plaintiff to pay costs and compensation to the defendant.

the defendant for any trouble and annoyance to which he may have been subjected.

Seventh.—If it should appear in the course of the inquiry, that the defendant is under engagement for the same and to a third party, notice shall immediately be issued for that party to appear and plead, either in person or by vakeel; and if such person or any third party shall, previously to the decision of the case, come forward and produce a similar deed of engagement, stipulating for the produce of the same portion of land, the Judge or other officer trying the case shall, after such summary investigation as may be necessary, determine whether either of the parties have any just claim to the produce of the land, and if so, which of them may have the prior and better claim; a preference will of course be given to engagements duly registered under the provisions of regulation XX. 1812.

Notice to be given to third parties, in what cases and their claims how to be investigated.

The result of such investigation shall be recorded, and a decree passed adjudging the question of right between the parties.

Eighth. No defendant, who may attend under the process described in this section, shall be confined in jail, or be in any manner detained longer than may suffice to take his answer to the claim, and to obtain from him such further explanations as the nature of the answer may suggest.

Defendant not to be subjected to unnecessary detention.

Ninth.—If, pending the summary inquiry in the manner above directed, it shall appear that the plant on the ground is in a state fit to be cut, and will be injured or destroyed if not cut it shall in such cases be competent to the Judge, or other officer trying the case, to pass an order for the delivery of the plant to either of the parties, provided that the said party consents and engages to pay to the other claimant (if the summary award should be ultimately in favour of the latter) a specific pecuniary compensation; the amount of such compensation shall be fixed by the judge or other person trying the case, in communication with the parties, and shall be regulated with reference to the estimated produce of the ground, and to the probable value of such produce when manufactured; and the amount, when so fixed, shall be carefully recorded on the procedings.

In what cases an order may be issued to deliver the plant to a party, before the summary inquiry may be completed.

See Sec. 11 Act x 1836.

Engagement to be entered into by such party.

4. *First* Any person in whose favour a summary award shall have been passed for the produce of any defined spot of land, shall be entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement ; and in the event of any attempt being made to cut or remove the plant, it shall be competent to the person holding the decree to apply to the nearest police darogah, and to claim from him the assistance of the police in preventing such removal ; it shall, moreover, be the duty of the police officers, and of all other officers, on such a decree being exhibited, to aid the person in whose favour it may have been passed to the utmost of their power.

Authority to watch fields and to prevent removal of the plant, given to parties in certain circumstance.

Second.—In order that the foregoing rule may not operate to the prejudice of the landholders, who, by the existing Regulations, are authorized to attach the crops for the realization of rents justly due to them, it is hereby provided, that whenever any manufacturer, who may have obtained an award under the foregoing rules, may cause the plant to be cut and taken away, he shall be held responsible, conjointly with the ryat, for any arrear of rent which may have been due on account of the specific parcel of ground from which the indigo plant may have been taken.

Security for rent due to landholders how provided.

Sec 11 of Act XIII of 1857 :—

"XI All opium the produce of land cultivated with poppy on account of Government, shall be delivered by the cultivators to the Sub-deputy Agents or other District Officers, or shall be brought by them to the Sudder Factory, as the Agent may direct. And no such opium shall be liable to be distrained or attached by a zamindar or other proprietor or a farmer of land for the recovery of arrears of rent,or by any other creditor of a culivator under any order or decree of court, but the sum due to the cultivator on account of such Opium may be attached by order of court in the hands of the Agent or of the District officer under the rules in force for such attachments."

Delivery of the opium produced.

Such opium not liable to distress or attachment.

Value thereof may be attached.

120. Notwithstanding anything in the last preceding section, no distraint shall be made—

When distraint not allowed.

(*a*) by a co-sharer who is not entitled to collect the whole of the rent from a tenant ;

(*b*) by a landholder who has covenanted not to distrain ;

(*c*) by a landholder of any produce, of the whole or any portion of which a previous distraint has been made by him ;

(*d*) in respect of any arrear which has been due for a longer period than one year ;

(*e*) in respect of any arrear for which security has been accepted by the landholder ;

and no distraint shall be made—

(*f*) by an agent who is not expressly authorized by power-of-attorney in that behalf ;

(*g*) by a servant of a person empowered to distrain, unless he has a written authority to distrain.

This section corresponds to secs. 57, 58, 59 and 60 of Act XII of 1881.

Clause (a) :—The point as to which of the proprietors the tenants had been used to pay their rents should be taken into consideration, and if it is found that they have always paid their rents to other sharers than those distraining, then the cultivators are entitled to recover in a suit for damages. The shareholders have their remedy against the sharer who acknowledged receipt of the rent (*Sheobaluk Singh* v, *Mungul Singh*, 1 S. D. A., p. 417, No. 464 of 1861, May 14 th, 1862) A and X jointly owned a patti of a pattidari mahal, and jointly cultivated certain land as their *sir* in the patti. X's share in the patti was sold and he became an ex-proprietor in respect of the *Sir* land. Subsequently the revenue having fallen in arrears, A's share was farmed to B and he also became an ex-proprietor in respect of the *Sir* land. A and X continued the joint cultivation of the land. B having distrained the joint crops for arrears of rent against A, A sued B under Sec. 93 (*f*) of Act XII of 1881 to contest the legality of the distress. *Held* that sec. 57 (*b*) and (*d*) of Act XII of 1881 had no bearing whatever on the case ; it was certain that B was the only person entitled to collect the whole rent from A and X ;

and it was equally clear that while the farm subsisted he was the person entitled to collect in the sense of sec. 57 (*d*) of that Act (*Janki Prasad* v. *Parshan Singh*, W. N., 1882, p. 136).

'Co-sharer'—It may be noticed that the word 'co-sharer' has been used in clause (*a*) and not the word landholder as in other clauses. It therefore shows that the word 'co-sharer' refers to the proprietor and not to intermediate landholders.

'Entitled to collect' :—A co-sharer who is entitled to *collect* the whole of the rent from a tenant has power to distrain. It is immaterial whether he is also entitled to *appropriate for his own use* the rent so collected.

'The whole of the rent' :—i. e., the whole of the rent due in respect of the land the crops standing on which are distraimed.

Clause (c) :—The Select Committee in their report, printed at page 75 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"We have inserted words to prevent a collusive distraint by a tenant of his sub-tenants' crops defeating the superior landholder's right of distraint."

Clause (d) :—

'Longer period than one year' :—There is no legal bar to a Zamindar's distraining for the rent of the current year, and suing afterwards for arrears of previous year (*Hur Suhai* v. *Thakoor Deen*, S. D. A., N.-W. P., No. 10 of 1857, April 29th, 1857).

Clause (f) :—

'Stamp duty on power of attorney' :—A power of attorney (1) when authorizing one person or more to act in a single transaction should bear a stamp duty, of one rupee ; (2) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally, should bear a stamp duty of five rupees ; and (3) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally, should bear a stamp duty of ten rupees (The Indian Stamp Act II of 1899, Schedule I Art. 48).

Clause (g) :—

Written authority to an Agent to distrain is exempt from Court fee duty [The Court Fees Act VII of 1870, sec. 19 (xiii)].

Rules for distraint proceedings :—Vide appendix B.

What may be distrained.

121. (1) The landholder shall be entitled to distrain—

(*a*) any crops or other products of the earth standing or ungathered on the holding ;

(*b*) any crops or other products of the earth which have grown on the holding, and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or in a homestead.

(2) The landholder shall not be entitled to distrain—

(*a*) any crops or other products after they have been stored by the tenant;

(*b*) any other property whatsoever.

This section corresponds to sec. 61 of Act XII of 1881.

'Other products of the earth':—See notes on 'produce' under sec. 119 sub sec. (1).

Procedure.

122. (1) Before or at the time when a distraint is made the distrainer shall serve on the defaulter a written demand for the amount of the arrear, together with an account exhibiting the ground on which the demand is made.

Defaulter to be served with written demand and account.

(2) The demand and account shall be dated and signed by the distrainer, and shall, if practicable, be served personally on the defaulter; or if he cannot be found shall be affixed to his usual place of residence.

This section corresponds to sec. 62 of Act XII of 1881.

Sub-section (2):—

'Shall be dated and signed by the distrainer':—The Select Committee in their report printed at page 75 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say:—"We have provided that the demand and account must be signed and dated by the distrainer to prevent any doubts as to the date on which the distraint mas made.."

123. (1) Unless the demand is immediately satisfied, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, date and sign the same, and deliver it to the defaulter, or, if he cannot be found, affix it to his usual place of residence, and a copy of such list or description, together with a copy of the written demand and account, shall be filed forthwith in the tahsil.

Distraint to be proportionate to arrear, and list of property to be served on owner, and copy filed in tahsil.

(2) If the distrainer has notice that the cultivator is some person other than the defaulter, a copy of the demand and of the list or description of the property shall in like manner be delivered to the cultivator.

(3) No distraint shall be made except between sunrise and sunset.

This section corresponds to sec. 63 of Act XII of 1881.

Sub-section (1).

'**Arrear**':—*i. e.*, with interest (vide sec. 101).

124. (1) Standing crops and other ungathered products may, notwithstanding the distraint, be tended, reaped, and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

Standing crops, &c., when distrained, may be reaped and stored.

(2) If the cultivator neglects to do so, the distrainer shall cause the said crops or products to be tended, reaped, or gathered, and stored in some convenient place in the neighbourhood, at the expense of the cultivator.

(3) In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

This section corresponds to sec. 64 of Act XII of 1881.

Sub-section (1) :—This sub-section corresponds to sec. 64 (*a*) of Act XII of 1881.

The property in the crops is in the ryat, subject however to distress, until transferred by some act of his own (*Pritum Koorme* v. *Edil Singh*, 18 W. R., 464), or until they are sold.

'Tended' :—The Select Committee in their report printed at page 75 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"We have inserted the word "tended' in sub-sections (1) and (2), as the crops may not, at the time of the distraint, be ready for reaping."

Sub-section (2) :—This sub-section corresponds to sec. 64 (*b*) of Act XII of 1881.

Sub-section (3) ;—This sub-section corresponds to sec. 64 (*c*) of Act XII of 1881.

Sale of products which cannot be stored.

125. Crops or products which, from their nature, do not admit of being stored, may be sold as hereinafter provided before they are reaped or gathered ; but, in such case, the distraint shall be made at least twenty days before the time when the crops or products, or any part of the same, are fit for reaping or gathering.

This section corresponds to sec. 64 (*d*) of Act XII of 1881.

Assistance to distrainer opposed or apprehending resistance.

126. If a distrainer is opposed, or apprehends resistance, he may apply to the Court, and the Court shall, if it appears necessary, depute an officer to assist the distrainer in making the distraint.

This section corresponds to sec. 65 of Act XII of 1881.

Limitation, Jurisdiction, application, appeal, review and revision :—There is no period of limitation for an application under this section (4th Schedule, Group D. Serial No. 46).

Applications under this section should be filed in the Court of the Tahsildar [sec. 174 (*a*)] and are triable by an Assistant Collector of the second class (sec. 171).

Applications under this section may be disposed of *ex parte* [sec. 193 (*b*)].

An appeal will lie to the Collector from an order of an Assistant Collector of the second class on an application under this section [sec. 176 (*b*)] within thirty days from the date of the order appealed against (4th Schedule, Group E, Serial No. 52). The decision of the Collector would be final, subject however to revision by the Board under sec. 185.

As to review vide secs. 183 and 184.

Court fee :—An application for distraint should bear a Court fee duty of eight annas [The Court Fees Act VII of 1870, Schedule II, Art. 1 (*b*), para 2]. A memorandum of appeal from an order on an application under this section should also bear a Court fee duty of eight annas [The Court Fees Act VII of 1870, Schedule II, Art 11 (*a*)].

Distraint to be withdrawn on tender of arrear and expenses before sale.

127. If at any time after property has been distrained, and before the day fixed for putting it up to sale as hereinafter provided, the defaulter or cultivator tenders payment of the arrear demanded and of the expenses of the distraint, the distrainer shall receive the same and shall forthwith withdraw the distraint.

This section corresponds to sec. 66 of Act XII of 1881.

'Tenders':—vide under sec. 111 (a).

Application for sale.

128. (1) Within five days from the time of making the distraint, the distrainer may apply to the proper officer, hereinafter called the sale-officer, for sale of the property specified in the list or description filed under section 123.

(2) If no such application is made, the crops or products shall be released from distraint.

This section cerresponds to sec. 67 of Act XII of 1881.

Sub-section (1) :—

'Within five days from the time of making the distraint :— The Select Committee in their report printed at page 75 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"There is no reason why application for the sale of the distrained crops should not be made within

five days of the distraint, whether the crops do or do not admit of being stored. It is very desirable that no unnecessary delay should occur in the distraint proceedings, as such delay generally results in waste and injury to the crops."

'Proper officer' :—The *kurk amin* shall be the sale officer for the purposes of chapter IX of the Act ; provided that the power of a sale officer to receive applications and fees for the sale of distrained property may be exercised by the officer in charge of the head quarters office of the tahsil whenever the *kurk amin* is absent therefrom. All applications so received shall be transmitted to the sale officer. (Notification No. $\frac{1070}{I-419F}$ dated 12th April 1902, printed in the Gazette, dated 19th April 1902, p. 251) ; vide also Rules for distraint proceedings given in Appendix B.

129. The application shall be in writing, and, shall specify the following particulars, namely,—

Contents of application

(*a*) the name and residence of the defaulter, and in the case provided for in section 123 (2), of the cultivator also ;

(*b*) the amount due ;

(*c*) the date of the distraint ; and

(*d*) the place in which the distrained property is.

This section. corresponds to sec. 68 Act XII of 1881.

Court fee on application :—The Court fee on an application under this section, when the value of the crop distrained is less than rupees fifty will be one anna [The Court Fees Act VII of 1870, Schedule II, Art. 1 (*a*) para 4]. But when the value exceeds rupees fifty, the Court fee payable will be eight annas [The Court Fees Act VII of 1870, Schedule II Art. 1 (*b*), para 2].

130. Together with the application, the distrainer shall deliver to the sale-officer the fee for the service of notice as hereinafter provided.

Fee for service of notice.

This section corresponds to the last paragraph of sec. 68 of Act XII of 1881.

Fee for the service of notice :—The fee to be paid for service of a notice shall be a cash fee of one rupee in every case (Notification No. $\frac{1070}{1-419\ F}$, date 12th April 1902, printed in the Gazette, dated 19th April 1902, p. 251.

Procedure on receipt of application.

131. (1) Immediately on receipt of such application and fee the sale-officer shall send a copy of the application and of the list or description filed under section 123 to the Court having authority to entertain a suit to contest the distraint,

and shall serve notice on the defaulter, requiring him either to pay the amount demanded, or to institute a suit to contest the distraint within fifteen days from the receipt of the notice.

(2) In the case provided for in section 123 (2) similar notice shall be served on the cultivator.

(3) The sale-officer shall by order fix the date for the sale, which shall be not less than twenty days from the application, and shall cause it to be proclaimed at the place where the distrained property is ; and he shall also send a copy of his order to the Court to be put up in its office.

(4) The proclamation shall also specify—

(*a*) the property to be sold,

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

This section corresponds to sec. 69 of Act XII of 1881.

When sale may be proceeded with.

132. If the institution of a suit to contest the distraint has not been certified, under section 142 (2), to the sale-officer on or before the date fixed in the proclamation of sale, he shall, unless the said demand, with such ex-

penses of the distraint as are allowed by him, is discharged in full, proceed, in manner hereinafter prescribed to sell the property or such part of it as may be necessary to satisfy the demand with the expenses of the distraint and the costs of the sale.

This section corresponds to sec. 73 of Act XII of 1881.

The Select Committee in their report printed at p. 75 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, say :—"We have used here and elsewhere the expression 'to contest the distraint,' instead of 'to contest the demand,' the former expression is applicable to all cases in which the distraint is contested, whether on the ground that the demand is unjust, or for any other reason."

Place and manner of sale.

133. (1) The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the sale-officer is of opinion that it is likely to sell there to better advantage.

(2) The property shall be sold by public auction, in one or more lots, as the sale-officer may think advisable.

(3) If the demand, with the expenses of the distraint and the costs of the sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

This section corresponds to sec. 74 of Act XII of 1881.

If fair price not offered, sale may be postponed and shall be then completed.

134. If, on the property being put up for sale, a fair price in the estimation of the sale-officer is not offered for it, and if the defaulter or cultivator applies to have the sale postponed until the next day, or, if a market is held near the place of sale, the next market day, the sale shall be postponed until such day, and

shall be then completed, whatever price may be offered for the property.

This section corresponds to sec. 75 of Act XII of 1881.

Sale shall be postponed:—A sale of distrained property cannot be adjourned under this section owing to the absence of bidders (*Emperor* v. *Tara Singh* and others; W. N. 1905; p. 65).

Payment of purchase-money.

135. The price of every lot shall be paid for in ready money at the time of sale or as soon thereafter as the sale-officer thinks necessary.

This section corresponds to sec. 76 para 1 of Act XII of 1881.

Re-sale on default.

136. In default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale, and all expenses attending such second sale, shall be certified to the Court by the sale-officer, and shall, at the instance either of the distrainer, the defaulter, or the cultivator, be recoverable from the defaulting purchaser under the rules contained in Chapter XIX of the Code of Civil Procedure for the execution of a decree for money.

This section corresponds to the second paragraph of sec. 76 of Act XII of 1881.

Certificate to purchaser.

137. When the purchase-money has been paid in full, the sale-officer shall give the purchaser a certificate describing the property purchased by him and the price paid.

This section corresponds to the third paragraph of sec. 76 of Act XII of 1881.

Disposal of proceeds of sale.

138. (1) From the proceeds of every sale of distrained property under this Act, the sale-officer shall make a deduc-

tion at the rate of one anna in the rupee on account of the costs of the sale, and shall remit the amount so deducted to the Tahsildar.

(2) He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distraint, and of the issue of the notice and proclamation of sale prescribed in section 131 to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

(3) The remainder shall he applied to the discharge of the arrear for which the distraint was made.

(4) The surplus (if any) shall be delivered to the person whose property has been sold.

This section corresponds to sec. 77 of Act XII of 1881.

Sub-section (3) :—This sub-section corresponds to the third paragraph of sec. 77 of Act XII of 1881, from which the words 'with interest thereon up to the day of sale' have been omitted, because "the amount would, as a rule, be insignificant, and the defaulter is not necessarily to blame for any delay in the sale" (Report of the Select Commitee printed at p. 76 of the N.-W. P. and O. Gazatte, dated 22nd June, 1901). The word 'arrear,' therefore, as used in this sub-section, does not include interest up to the day of sale.

Sale-officers and employés prohibited from purchasing.

139. Sale-officers, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

This section corresponds to sec. 78 of Act XII of 1881.

Persons contravening the terms of this section are amenable to the provisions of sec. 169 of the Indian Penal Code.

Postponement of sale and report to Court when owner has not received due notice

140. If, in any case, on proceeding to hold any such sale, the sale-officer finds that due notice of the distraint and intended sale has not been given, he shall postpone the sale and report the case to the

Court, which shall thereupon direct the issue of another notice and proclamation of sale under section 131, or pass such other order as it thinks fit.

This section corresponds to the second paragraph of Sec. 79 of Act XII of 1881.

Levy of charge when sale-officer attends and no sale takes place.

141. (1) When the sale-officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, because the demand of the distrainer has been previously satisfied, without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of costs shall be leviable, and shall be calculated on the estimated value of the distrained property.

(2) If the distrainer's demand is not satisfied until the day fixed for the sale, the charge shall be payable by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

(3) In every other case it shall be payable by the distrainer, and may be recovered from him as an arrear of revenue.

(4) In no case shall a larger amount than ten rupees be recoverable under this section.

This section corresponds to Sec. 80 of Act XII of 1881.

Suits relating to Distraint.

Suit to contest distraint before sale.

142. (1) If sale has not taken place under section 132 or section 136, any person whose property has been distrained may bring a suit to contest the distraint, provided that, if notice has been served on the plaintiff under sub-sec-

tion (1) or sub-section (2) of section 131, he must institute his suit within fifteen days from the receipt of the notice.

(2) If a suit is instituted under sub-section (1), the Court shall send to the sale-officer or, if so requested, shall deliver to the plaintiff, a certificate of the institution of such suit; and on such certificate being received by or presented to the sale-officer before sale has taken place, he shall suspend the sale.

(3) In a suit to contest a distraint, the distrainer shall be required to prove the amount of the arrear for which the distraint was made.

(4) If the plaintiff in a suit under this section is the defaulter or the cultivator, and the demand of the distrainer, or any part thereof, is found to be due, the Court shall make a decree for the amount in favour of the distrainer, and such amount shall be recovered from the property as provided in section 144.

(5) If the distraint is adjudged to be vexatious or groundless, the Court, besides directing the release of the distrained property, may, on the application of the plaintiff, award to him such compensation as the circumstances of the case may require.

This section has been inserted to enable any person, whether the defaulter or the cultivator or any other person, and whether he admits the proprietary title of the distrainer or not, to contest the distraint before the sale has taken place and to distinguish between the case of those who have been served with notice of the distrainer's application for sale, and of those who have had no such notice (Report of the Select Committee printed at page 74 of the N.-W. P. and O. Gazette, dated 22nd June, 1901.)

Sub-section (1) :—This section corresponds to sec. 71 of Act XII of 1881.

Suits for compensation for wrongful distraint under secs. 145 and 146 should be distinguished from suits under this sub-section.

'Any person':—*In Azimullah* v. *Najinuddin*, (S. D. B. R., No. 14 of 1892 ; W. N., 1893, p. 16) it was held that in a suit to contest distraint brought under sec. 71 of Act XII of 1881, it is not necessary that the plaintiff be a tenant or cultivator.

'Distrained':—If the property has been seized otherwise than by distraint this sub-section would not apply.

The plaintiff and defendant were proprietors of separate but contiguous estates. The plaintiff sued under sec. 143, Act X of 1859, for damages for illegal distraint and carrying away of the crop grown on certain land belonging to the defendant, which the plaintiff alleged fell into his own estate by the restoration of the boundary pillars between the estates of the two parties, and for which the plaintiff was ready to pay rent to the defendant, who however, refused to receive it. Held, in special appeal, that the suit was wrongfully brought in the Revenue Court, the contention being one about a disputed boundary and involving a question of proprietary right, and there being no actual or implied relationship of landlord and tenant between the parties (*Rughoonath Sahoy* v. *Boondir Mundir*, 1 W. R, 36). A suit by A to set aside an alleged collusive decree for rent obtained by B against C, under which decree A was ejected from his lands and his crops were seized, is properly brought in the Civil Court as raising a question of title. Such a case is distinguishable from a case of illegal distraint by a landlord (*Gopeenath Dutt* v. *Preonath Sircar*, 6 W. R., Act X 7).

'Any person whose property has been distrained':—These words show that a suit under this sub-section to contest the distraint can only be brought by a person who is owner of the crops distrained. A third person who claims the right to distrain for arrears of rent on the ground of his being actually and in good faith in the receipt and enjoyment of the rent of the land, cannot bring a suit under this sub-section. There is no express provision in this Act similar to that of Sec. 84 of Act XII of 1881, but under sec. 32 of the Code of Civil Procedure such interveners can be made parties to the suit.

Suits under this sub-section can be brought (1) by a tenant on the ground that the demand in respect of which the property has been distrained is excessive, or that nothing is due ; or (2) by any person whose property has been distrained, on the ground that the property distrained is not liable under sec. 119 for the demand of the person who has distrained the property.

May bring a suit to contest a distraint:—In a suit brought by a tenant to contest a distraint it was found that at the time the suit was instituted the crops which had been distrained had ceased to exist, having been destroyed by fire. *Held* that as the whole foundation of

the suit rested upon the existence of such crops the suit should have been dismissed as brought, on the ground that the subject matter to which the special form of suit preferred by the tenant related had ceased to exist, and that no effective order could be passed (*Radha Prasad Singh* v. *Annu Pandey*, W. N., 1882, p. 50).

Limitation, jurisdiction, suit, appeal, review and revision :—As to limitation for suits to contest a distraint vide sub-sec. (1).

(1) Suits under this section in which the value of the subject matter does not exceed one hundred rupees should be filed int he Court of the Tahsildar [Sec. 174 (*a*)] and will be disposed of by an Assistant Collector of the second class (Sec. 171). An appeal will lie to the Collector from the decree of an Assistant Collector of the second class (Sec. 176) within thirty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 52). An appeal will lie to the District Judge from an appellate decree of a Collector in a suit under this sub-section within thirty days from the date of the decree appealed against (Indian Limitation Act XV of 1877, schedule II, 2nd Division, Art. 152) if (*a*) a question of proprietary title has been in issue in the first appellate Court, and is a matter in issue in the appeal ; or (*b*) a question of jurisdiction has been decided [Sec. 180 (2)]. No appeal would lie to the High Court from a decree in appeal of a district Judge under sec. 182, because that section allows a *second* appeal only and not a *third* one, as it would be in this case. As to review Vide Secs. 183 and 184. As to revision Vide Sec. 185.

(2) Suits under this sub-section in which the value of the subject matter exceeds one hundred rupees should be filed in the Court of the Assistant Collector in charge of the subdivision ; provided that if there is no Assistant Collector in charge of the sub division, such suits should be filed in the Court of the Collector [Sec. 174 (*b*)]. Such suits will be disposed of by an Assistant Collector of the 1st Class (Sec. 172) or by the Collector (Sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [Sec. 180 (1)] will lie to the District Judge under the provisions of sec. 177, within thirty days from the date of the decree appealed against (Indian Limitation Act XV of 1877, Schedule II, second division, Art. 152); provided that when the value of the subject matter of the suit exceeds five thousand rupees the appeal will lie to the High Court (sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act XV of 1877, Schedule II, second division, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a district Judge in accordance with the provisions of Chapter XLII of the Code of Civil Procedure (sec. 182) within ninety days from the date of the decree appealed

against. As to review Vide sec. 184. There can be no revision by the Board of the decree in suits under this sub-section passed by an Assistant Collector of the first class or by the Collector (Vide Sec 185).

Sub-section (2) :—This sub-section corresponds to sec. 70 of Act XII of 1881.

'If so requested' :—These words show that the request need not necessarily be in writing.

Sub-section (3) :—This sub-section corresponds to sec. 82 (*a*) of Act XII of 1881.

In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of *jumma*. If thereupon the tenant pleads payment, and payment is denied, the onus is on the tenant to prove his allegation (*Oojan Dewan* v. *Prannath Mundul*, 8 W. R., 219).

Sub-section (4) :—This sub-section corresponds to sec. 82 (*b*) of of Act XII of 1881.

'Shall make a decree' :—The simple question to be determined by the Court is whether the demand made by the distrainer is good and valid; it is not necessary to enquire whether all the steps were perfectly correct (*Doonee Mahtoo* v. *Sheo Narain Singh*, 21 W. R., 37). When on the one hand a ryat institutes a suit to contest the demand of a distrainer, the Court has no option but must adjudicate upon the demand. If on the other hand the distrainer has distrained otherwise than according to the provisions of law he has done so at his peril, and rendered himself liable to an action for damages by the owner of the distrained property (*Tarinee Kant Lahiree Chowdhry* v. *Raj Kishore Tontry*, 24 W. R., 334).

Such amount shall be recovered from the property :—These words show that the decree under this sub-section will not have the force and effect of a decree for arrears of rent under sec. 102, so as to be recoverable from any property. The amount decreed under this sub-section is recoverable only by sale of the distrained property under the provisions of sec. 144, and if the proceeds of the sale are not sufficient to satisfy the demand of the distainer, he is not entitled to execute the decree passed under this sub-section, for the balance remaining due by attachment and sale of other property of the defaulting tenant, as he would have been entitled to, if the decree were a decree for arrears of rent under sec. 102.

Sub-section (5) :—This sub-section corresponds to sec. 82 (*c*) of Act XII of 1881.

'On the application of the plaintiff' :—It is not necessary that the compensation should have been prayed for in the plaint filed to

contest the distraint. The Court may award compensation on the application of the plaintiff at any time before judgment, if the distraint is adjudged to be vexatious or groundless.

Distraint to be withdrawn on security given.

143. (1) The plaintiff may, at the time of instituting any such suit as aforesaid, or at any subsequent period, give security for the payment of whatever sum may be adjudged to be due from the defaulter with interest and costs of the suit.

(2) When such security has been given, the Court shall give to the plaintiff a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same.

(3) Upon such certificate being presented to the distrainer, or served on him by order of the Court, the property shall be released from distraint.

This section corresponds to sec. 72 of Act XII of 1881.

The Select Committee in their report printed at page 76 of the N.-W. P. & O. Gazette, dated 22d June, 1901, say :—

"We have amended the wording of this section so as to bring the law into harmony with the corresponding provisions in secs. 253 and 545, Civil Procedure Code, and to allow for a deposit in cash, a common and convenient practice."

From the above remarks it appears that when the property has been released from distraint under this section, the decree of the Court may be executed under secs. 253 and 545 of the Code of Civil Procedure.

Sale of property when amount adjudged due.

144. (1) When the distrained property has not been released from distraint under the provisions of section 143, if the demand, or any portion of it is adjudged to be due, the Court shall issue an order to the sale-officer specifying the amount adjudged to be due, and authorizing the sale of such property.

(2) The sale-officer shall thereupon fix a date for the sale not less than five nor more than ten days from the date of the proclamation, and shall cause the same to be proclaimed, and, unless the amount specified in the order of the Court, together with the expenses of distraint, is paid, shall sell the property as hereinbefore provided.

This section corresponds to sec. 81 of Act XII of 1881.

Persons not suing in time to save property from sale may sue for compensation.

145. If a person whose property has been distrained has not brought a suit to contest the distraint as provided by section 142, and his property is sold, he may, nevertheless, institute a suit to recover compensation for such distraint and sale.

This section corresponds to sec. 85 of Act XII of 1881.

The Select Committee in their report printed at page 76 of the N.-W. P. & O. Gazette, dated 22nd June, 1901, say :—"This section provides for cases in which a suit was not brought in time to prevent sale. In all such cases a suit for compensation for an illegal distraint should be allowed, whatever the cause may have been, for the plaintiff's not having sued in time to prevent sale taking place. It is immaterial on what ground the suit to contest the distraint is based ; even if the suit is to try the right to the property, it is equally a suit to contest the distraint."

Liability of distrainer for acts of his agents :—A principal is bound for wrongful distraint made by his agent authorized by him in that behalf, if he received the proceeds of the distress knowing that they have been obtained by distress (*Ramjoy Mundul* v. *Kally Mohun Roy Chowdhry*, *Marshall's* Reports, 282). A master cannot be held answerable for the tortious acts of servants not acting within the ordinary scope of their duty, unless it be shown that they acted under his authority or that he subsequently ratified their acts (*Shama Soonduree Debia* v. *Mallyut Mundul*, 11 W. R.. 101).

Limitation, Jurisdiction, suit, appeal and review :—Suits under this section to recover compensation for distraint and sale of

property should be brought within three months from the date on which the sale took place (4th Schedule, Group A. Serial No. 5) (1) suits under this section in which the value of the subject matter does not exceed one hundred rupees should be filed in the Court of the Tahsildar [Sec. 174 (*a*)] Such suits would be disposed of by an Assistant Collector of the second class (sec. 171). An appeal will lie to the Collector from the decree of an Assistant Collector of the second class in such suits [sec. 176 *a*)] within thirty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 52). An appeal will lie to the District Judge within thirty days from the date of the decree appealed against (Indian Limitation Act, Schedule II, 2nd Division, Art. 152), from an appellate decree of a Collector in such suits in which (*a*) a question of proprietary title has been in issue in the first appellate Court, and is a matter in issue in the appeal; or (*b*) a question of jurisdiction has been decided [sec. 180 (2)]. No appeal will lie to the High Court from the decree inappeal of a District Judge under the provisions of sec. 182. for that section allows only a *second* appeal and not a *third* one, as it will be in this case. (2) suits under this sub-section in which the value of the subject matter exceeds one hundred rupees should be filed in the Court of the Assistant Collector in charge of the sub-division; provided that if there is no Assistant Collector in charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (b)]. Such suits will be disposed of by an Assistant Collector of the 1st class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the 1st class or from that of a Collector [sec. 180 (1)] will lie to the District Judge within thirty days from the date of the decree appealed against (Indian Limitation Act, Schedule II, 2nd Division, Art 152) if the amount of the subject matter does not exceed five thousand rupees; provided that when the amount of the subject matter of the suit exceeds five thousand rupees, the appeal will lie to the High Court (sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act, Schedule II, 2nd Division, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of Chapter XLII of the Code of Civil Procedure (sec. 182).

As to review Vide sec. 184.

Court-fee :—The Court-fee payable on a plaint or memorandum of appeal will be computed according to the amount claimed [The Court-Fees Act VII of 1870, sec. 7 (1)]

146. If any person under colour of this Act distrains or sells, or causes to be sold, any property otherwise than according to the provisions of this Act,

Wrongful acts of distrainer.

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the keeping and preservation thereof,

or if the distraint is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit against the distrainer for compensation for any injury which he has thereby sustained.

If the distrainer is an agent or servant, his principal may be joined as a defendant in the suit.

This section corresponds to secs. 86 and 59 of Act XII of 1881.

This section differs from sec. 145 inasmuch as under the latter section a suit may be instituted for compensation, even if the distrainer has no right to distrain; while under this section the right to distrain may not be in dispute, but the way in which it was carried out may be illegal.

Compensation:—Before a tenant can obtain any decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained (*Oojan Dewan* v. *Prannath Mundul*, 8 W. R., 220). In a suit for recovery of damages for illegal distraint on the ground that the landlord had distrained the plaintiff's crop alleging his rent to be more than it really was, the onus is on the plaintiff to prove the annual rent payable by him (*Chandra Kant Mukerji* v. *Hem Lal Mandal*, 1 C. W. N., 463). Where a suit has been brought on account of prope[illegible] damaged or destroyed by neglect of a distrainer, the Court is not com[illegible]t to award damages for vexatious distraint. Such damages are prop[illegible] awarded under sec. 138 of Act X of 1859 (corresponding to sec. 142 of this Act) in a suit to contest the distrainer's demand (*Nonkoo Ram* v. *Woojogur Roy* 5 W. R., Act X, 68).

Special Provisions.

Rights in respect of sub-tenancies.

147. (1) When an arrear of rent is realised from a cultivator by proceedings in distraint by any person other than his immediate landholder, he shall be entitled to deduct the amount so realised from any rent payable by him to such landholder, and such landholder, if he is not the defaulter, shall in like manner be entitled to deduct the same amount from any rent payable by him to his landholder, and so on until the defaulter is reached.

(2) In lieu of deducting any such amount so realised the sub-tenant shall be entitled to institute a suit for the recovery of the same from the defaulter.

(3) Where land is sub-let and any conflict arises between the claims of a superior and inferior landholder who distrain the same property, the claims of the superior landholder shall have priority.

This section is new and corresponds to secs. 137 and 138 of the Bengal Tenany Act.

Scope of the section :—The cultivator from whom an arrear of rent is realized by proceedings in distraint and who is not the defaulter, is entitled to either (1) deduct the amount so realized from the rent payable by him to his immediate landholder ; or (2) to recover by suit the amount so realized from the defaulter. He cannot avail himself of both these remedies ; he should select one.

'Cultivator' :—This word has been used to show that reference is made to the cultivator spoken of in section 123 (2) (vide report of the Select Committee, printed at page 76 of the N.-W. P. & O. Gazette, dated 22nd June, 1901).

Sub-Section (1) :—In order to understand what this sub-section means the following illustration may be useful :—

Illustration.

Of a certain holding B is A's tenant ; C is B's tenant, D is C's tenant and E is D's tenant. A realizes arrears of rent, due to him from B., by distraining the crops of E. Under this sub-section E is entitled to

deduct the amount so realized by A from the rent payable by him to D (his immediate landholder). In the same way D is entitled to deduct the amount so realized by A from the rent payable by him to C., C is entitled to deduct the amount so realized from the rent payable by him to B. But B will not be entitled to deduct the amount so realized from the rent payable by him to A., because B is himself the defaulter.

Sub-section (2) :—The conditions precedent for instituting the suit which a cultivator or other sub-tenant is entitled to bring under this sub-section are :—

(1) That he is not the defaulter,

(2) That he has already paid the rent payable by him to his land-holder, and

(3) That he has not availed himself of the remedy allowed by sub-section (1).

Limitation, jurisdiction, suit, appeal and review :—Suits under this sub-section for recovery of the amount realized from a sub-tenant by proceedings in distraint should be filed within three months from the date of realisation (4th Schedule Group A., Serial No. 7). As other matters, vide under section 145.

Court-fee :—Vide under sec. 145.

Conflict of rights upon distraint and attachment.

148. When any conflict arises between the rights of a distrainer and of a person attaching or selling the same property in execution of a decree of a Civil or Revenue Court, the right of the distrainer shall prevail : but the surplus (if any) payable under section 138 to the person whose property has been distrained shall be deposited in the Court from which the order for attachment or sale issued.

This section is new and corresponds to section 139 of the Bengal Tenancy Act.

Penalties.

Penalties for dishonest distraint, or resistance to distraint.

149. (1) If any person—

(*a*) under colour of this Act dishonestly distrains, sells, or causes to be sold, any property, otherwise than in accordance with the provisions of this Act, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

(2) Any person who abets the doing of any such act shall be deemed to have abetted the commission of such offence.

This section corresponds to sec. 87 and 89 of Act XII of 1881 and to sec. 186 of the Bengal Tenancy Act.

Sub-section (1)

Clause (a) :—

'Under colour of this Act dishonestly' :—The Select Committee in their report printed at page 76 of the N.-W. P. and Oudh Gazette dated 22nd June, 1901, say :—"We have insertedt he words 'under colour of this Act dishonestly.' The section in the Bill has been drafted on the lines of section 186 of the Bengal Tenancy Act. But in Bengal distraint can only be effected through the courts, and any person making personal distraint must necessarily be acting in bad faith and so fairly liable to a criminal prosecution. In these Provinces personal distraint is lawful, and it would be injustice to declare any technical failure to comply with the provisions of this Act to be a criminal offence, unless the offender is acting dishonestly."

'Dishonestly' :—Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, he is said to do that thing 'dishonestly.' (sec. 24 of the Indian Penal Code). As to what is 'wrongful gain' or 'wrongful loss' vide sec. 23 of the Indian Penal Code.

Clause (b) :—A Zemindar is justified in exercising his right of private distraint of crops, if he has served the defaulters with written notice under Act X of 1859 sec. 116 : and, in such a case, ryots who knowingly resist the distraint, are not protected by the Penal Code, sec. 79. But, if the zemindar's people enter upon crops with intention of distraining without notice, the ryot-owners are justified in considering such actions as trespass (*The Queen* v. *Kanhai Sahu*, 23 W. R., Cr. 40).

"Criminal trespass" :—As to definition of 'criminal trespass' vide section 441 of the Indlan Penal Code and as for its punishment vide sec. 447 of the same Code.

Sub-section (2) :—As to 'abetment' vide Chapter V of the Indian Penal Code.

CHAPTER X.

RESUMPTION OF RENT FREE GRANT.

The Select Committee in their report on this Chapter, printed at pages 76 and 77 of the N.-W. P. & O. Gazette dated 22nd June, 1901, say :—"The holder of a rent free grant may, according to circumstances, be liable to be dispossessed on resumption of the grant taking place, or he may be entitled to remain in possession as a tenant on condition of the payment of rent, or he may, by length of possession have acquired a proprietary right in the land, in which case he is liable to pay the revenue (if any) which has been assessed on the land.

"To avoid multiplicity of suits it is expressly declared in sec. 171*D* (now section 153) that the Court is bound to dispose of the whole dispute between the proprietor and the grantee, and either dismiss the suit entirely, or, according to circumstances, order the resumption of the grant, or assess it to rent, or declare the grantee liable for the revenue ; and section 171*F* (now section 155) clearly indicates that a decree for ejectment must follow on the decision of the Court that the grant is liable to resumption. In section 171*I* (now section 158) we have omitted sub-section (2). It appears to us that it is only in mahals which are assessed to revenue that the ex-grantee, when declared proprietor, should be liable to pay revenue under these provisions : in revenue free mahals the proprietor pays no revenue and is not entitled to recover any payment on account of revenue from the new proprietor of the plot, no revenue, in fact, being assessed thereon.

" The only other point to which special reference need be made is the case of service tenures. The holders of such tenures are, in Act XII of 1881, regarded as tenants, and it would be as logical to take this view of their tenure as to take that which we prefer as more convenient, namely, to regard them as grantees of conditional rent free grants, the condition being the rendering of some form of service, a view which is in harmony with the idea conveyed by the ordinary vernacular term for such holdings *viz.*, rent free land held in lien of service (*muafi khidmati*). Great practical inconvenience has been experienced in dealing with these service tenures under Act XII of 1881. The proprietor alleging a person to be in possession as a service tenant issues notice of ejectment ; the tenant objects that he is a rent free grantee, and the proprietor is referred by the court to a suit under section 30 (Act XII of 1881) under which he

is compelled to mis-state his case by claiming to resume a rent free grant, though he denies the existence of such a grant.

"If the holder of land for which he pays no rent in the ordinary sense of the term but which he holds free of rent on condition of service, is treated as the holder of a conditional rent free grant, his case can be dealt with effectually under sec. 171 E (now section 154) and all litigation between the parties will come to an end. If this procedure is not adopted, it will be necessary to provide that procedings for the ejectment of so-called service tenants should not follow those for the ejectment of other tenants, but should be similar to those provided for the resumption of a rent free grant—circuitous method of arriving at the same result.

Land held rent-free liable to resumption, assessment of rent, or payment of revenue.

150. A proprietor of a mahál or part of a mahál may sue to resume possession of, or to have rent assessed on, any land situated in such mahál or part of a mahál purporting to be held rent-free, whether by grant in writing or otherwise, or to have the holder thereof declared to be liable to pay the revenue assessed on it.

This section corresponds to section 30 (*b*) of Act XII of 1881.

Scope of the section :—The proprietor of a mahal has, under this section, the following rights in respect of rent-free grants :—

(1) To sue for resumption in cases enumerated by section 154 ;

(2) To have the holder thereof declared to be liable to pay the revenue assessed on it in cases falling under sec. 158.

(3) To have rent assessed on such grant in cases falling under sec. 154 (3) and sec. 156 ; and

'Rent free' :—In *Ganga Dhar* v. *Baldeo*, 1. L. R., R. R. S. 118 ; *Puran Mal* v. *Padma*. I. L. R., 2 All. 732 ; *Nathwa* v. *Bhura*, S. D. B. R., No. 11 of 1883, and *Waris Ali* v. *Muhammad Ismail*, I. L. R. 8. All. 552 ; W. N. 1886, p. 221 it was held that a person holding land free of rent in lieu of service is not a grantee as defined in sec. 30, Act XII of 1881 (coresponding to this section). The whole question turned upon the interpretation of the word "rendered" occurring in the definition of the word "rent." It was argued that a person rendering service in lieu of occupation of land was paying rent as defined in section 3, sub-section (2) of Act XII of 1881 and therefore he could not be treated as rent free grantee. In the ruling last noted Mahmood, J. in an exhaus-

tive dissentient judgment held that the word 'rendered' as used in the definition of the word 'rent' did not include rendering of service, and therefore a person holding land free of rent in lieu of service could not be regarded as paying rent. He was a rent free grantee. The Legislature also appears to have taken the same view as Mahmood, J. took in the above ruling because we now find in the term 'rent-free grantee' included a person who holds land on service tenure [sec. 4, subsec. (8)]. Section 154 also provides for resumption of land which is held for the performance of some specific service, religious or secular, which the proprietor no longer requires.

Cases where section does not apply :—The ancestor of the Appellant, at the time of selling his proprietary rights in an estate to the person from whom the Respondent derived his title, reserved for his own use and occupation, as *Nankar*, a certain plot of land to be held rent-free, the vendee engaging to pay the revenue assessed on it. Held in a suit brought by Respondent to resume and assess to rent the holding as being an invalid rent-free grant, that the reservation was not of the nature of a rent-free grant, and that the proprietary right in the land vested in Appellant—also that Appellant being the person in possession, was responsible to Government for the revenue, notwithstanding any private arrangement to the contrary between the parties to the deed of sale (*Dirjaj Singh* v. *Nawab Muzaffar Husain*, 1. L. R., R. R. S. 187) ; a person recorded at settlement in the khewat as a '*nankardar* is not in the position of a tenant holding rent-fee (*Ganesh Dube* v. *Ganesh Prasad*, S. D. B. R. No. 17 of 1884) ; where a rent free holder has encroached on the adjoining land and has enjoyed it rent free and adversely to Zemindari right for more than 12 years, *Held* that he cannot be dispossessed of it, nor assessed with rent in respect of it (*Bhagoutee Charan* v. *Shiva Prasad*, 1 Agra., Rev. 38).

Acquisition of occupancy right :—A cultivator under a "rent free grantee" is a tenant, and not a sub-tanant, and can acquire a right of occupancy in land cultivated by him continuously for 12 years (*Ajita* v. *Gobind Prasad*, S. D. B. R. No. 10 of 1904). The parties were recorded as Zemindar and tenant in a rent free grove. *Held*, that the period of occupation of the grove before it came under cultivation cannot count towards the period required for the acquisition of a right of occupancy (*Girwar Sahai* v. *Janki Prasad*, S.D. B. R. No. 3 of 1888).

Claim for improvement :—A grantee, whose service grant is resumed, cannot claim compensation on account of improvements (*Maharaj Raja Ramji* v. *Abdulla Khan*, S. D. B. R. No. 4 of 1904)

Who can sue for resumption :—The proprietor of a mahal or part of a mahal can bring a suit under this section. Where there are

several co-sharers in an undivided property all of them shall have to bring such suit conjointly unless they have appointed an agent to act on behalf of them all [sec. 194 (1)]. The *lambardar* of a mahal, as representative of the co-sharers is entitled to bring a suit under section 150 of the Tenancy Act for resumption of a rent-free grant, and the assent or dissent of the co-sharers is immaterial unless there exist special circumstances disabling the lambardar from exercising the right to resume ; *Held* also that clause (1) of section 194 does not affect the lambardar's right to sue (*Deepa* v. *Udai Ram.* S. D. B. R. No. 6 of 1903).

Burden of proof in suits for resumption :—The burden of proving that the land is not merely included within the boundary of the revenue paying mahal but actually forms part of it lies on the Zamindar (*Mahabeer Pershad* v. *Oomrao Singh.* 1 Agra. 167). In suits for the resumption of land alleged by the defendant to be *Lakheraj* the burden of proof is in the first instance on the plaintiff to show that the lands are *mal.* The fact that the defendant is a tenant of the plantiff's is a matter to be taken into consideration by the court in determining whether, on the facts of the case, the plaintiff has made out a *prima facie* case, but unless the court finds that the plaintiff has made out a *prima facie* case, judgment should be given for the defendant (*Bacharam Mundul* v. *Peary Mohun Banerjee* I. L. R., 9 Calc. 813 ; *Narendar Narain* v. *Bishun Chundra Das* I. L. R., 12 Calc. 182) ; where persons, who under the law, would (if their claims were good) have been entitled to be settled with and recorded as proprietors but who have remained as mere tenants, or at the best as holding mere Zamindari grants, resist an application for resumption of the grants, it is for them to prove, if they allege it, that the grant was made before the 1 st December 1790—not for the landholder to prove, as a preliminary to his application being entertained that the grant was made after that date (*Dummar Singh* v. *Raja Khushal Singh*, S. D. B. R. No. 15 of 1893 ; W. N., 1893, p. 193 ; *Mahomed Aktur* v. *Reily*, 24 W. R., 447) ; a plaintiff in a suit for resumption of land is bound to prove *prima facie* that the grant was made at such a time as to be resumable under this section ; when such a *prima facie* case is made out, the *onus probandi* is shifted on the defendant, who, to exempt himself from assessment, must show that his tenure existed before the 22nd day of December 1873 (*Harryhur Mookhopadhya* v. *Madhub Chandra Babu*, 14 M.I A., 152). In a suit to resume a *lakheraj* tenure under section 28, Act X of 1859, it was held that the *onus probandi* in such case is on the plaintiff (*Maharanee Inderjeet Koonwer* v. *Shokowri Sahoo*, W. R. F. B., 81).

Grant how proved :—The production of a *lakheraj sunnad* is not necessary to prove that land is held rent free ; the fact may be legally

established by long and uninterrupted possession without payment of rent (*Dhunpat Singh* v. *Russomoyee Chowdhrain* 10 W. R., 461).

'**To pay the revenue assessed on it**' :—*i. e.*, in cases when rent free tenure confers proprietary right. *vide* sec. 158.

Saving of certain lands held rent-free.

151. All land held rent-free shall be liable to resumption or assessment of rent, or the holder of such land shall be declared liable to pay the revenue assessed thereon, unless the holder establishes that the land previously to the 22nd day of December 1873—

(*a*) was held rent-free under a judicial decision, or

(*b*) had been acquired as a rent-free holding for a valuable consideration and the right to resume it had been barred by section 28, Act X of 1859, or by the Indian Limitation Act, 1871, Schedule II, Article 130 :

Provided that no land held under a written instrument, whether executed before or after the commencement of this Act, by which the grantor expressly agrees that the grant shall not be resumed, shall be liable to resumption or assessment of rent until the grantor dies, or the term of the current settlement of the local area in which the grant is situated expires, whichever event first occurs.

This section corresponds to section 30 (*f*) and (*c*) of Act XII of 1881.

Burden of proof in suits for resumption :—see notes under section 150, supra.

'Act X of 1859, sec. 28,' is as follows :—'.....Every such suit shall be instituted within the period of twelve years from the time when the title of the person, claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. If such period has already elapsed, or will elapse within two years from

the date of the passing of this Act, such suit may be brought at any time within two years from such date.'

Article 130 of the second schedule to the Indian Limitation Act IX of 1871 is as follows :—

Description of suit.	Period of limitation.	Time when period begins to run.
For the resumption or assessment of rent free land	Twelve years.	When the right to resume or assess the land first accrued. Provided that no such suit shall be maintained where the land forms part of a permanently settled estate, and has been held rent-free from the time of the permanent settlement.

Application of this clause :—See notes under sub-section (2) section 152 infra.

Procedure when district is under settlement.

152. (1) Suits under section 150 shall, when the local area in which the land is situated is under settlement, be instituted in the Court of the Settlement Officer, who shall have the powers of Collector under this Chapter.

(2) Nothing in the Indian Limitation Act, 1877, shall bar the right to institute a suit under this act to assess to rent land held rent-free.

Sub-section (1) :—This sub-section is new.

Sub-section (2) :—This sub-section corresponds to section 30 (*e*) of Act XII of 1881.

Application of the sub-section :—Clause (*b*) of section 151 has reference to all the three kinds of suits relating to rent-free grants *viz* :— to suits (1) to assess to rent land held rent free, (2) to resumption of rent-free grants, and (3) to have the holder of such grant declared liable to pay the revenue assessed thereon ; but this sub-section relates to suits of the first and third class only. They are exempted from the operation of the Statute of Limitation. A land-holder suing for resumption of rent-free grants after 12 years' from the date on which the right to resume first accrued cannot claim the benefit of this sub-section.

153. (1) In a suit for the resumption of a rent-free grant, if the Court finds, on grounds other than those specified in section 151, that the grant is not liable to resumption, it shall proceed to determine, under sections 156 and 158, whether the land is liable to assessment of rent, or whether the holder thereof is liable to pay the revenue assessed thereon.

Procedure in a suit for resumption.

(2) In a suit for the assessment of rent on a rent-free grant, if the Court finds, on grounds other than those specified in section 151, that the land is not liable to assessment of rent, it shall proceed to determine, under section 158, whether the holder thereof is liable to pay the revenue assessed thereon.

This section is altogether new.

Object of the section :—The object of this section is to avoid multiplicity of suits, vide report of the Select Committee given in the beginning of this Chapter.

154 (1) Land held rent-free shall be liable to resumption, only when by the terms of the grant or by local custom it is held—

Rent-free land when liable to resumption.

(*a*) at the pleasure of the grantor ; or

(*b*) for the performance of some specific service, religious or secular, which the proprietor no longer requires ; or

(*c*) conditionally or for a term, and the condition is broken or the term expires.

(2) Every suit for resumption shall be brought within twelve years from the date on which the right to resume first accrued. Such right first accrues—

in case (*a*), at the commencement of this Act in

respect of existing grants, and in respect of future grants on the date of such grant;

in case (*b*), on notice in writing by the proprietor to the grantee that the service is no longer required;

in case (*c*), when the condition is broken or the term expires.

(3) Nothing in this section shall prevent the proprietor from suing for assessment of rent on land resumable under this section in lieu of resumption thereof.

This section is new. *Vide* report of the Select Committee given in the beginning of this Chapter.

Sub-section (1)

Clause (b) :—Where a sunnad granted to the holder of jagheer was only a confirmation by the Government and the Rajah of the tenure under which the jagheer was held, and authorized the jagheerdar to remain in possession and the performance of services with his brothers, without describing the kind of service. *Held* that the Rajah could not resume the land without proof that the services to be performed by the jagheerdar were personal services only to the Rajah (*Rajah Nilmony Singh Deo* v. *The Government and Beer Singh*, 18 W. R., 321) but see *Puran Mal* v. *Padma*, I. L R., 2 All., 732, where the holding of a village watchman was held to be a service tenure. A zamindar brought a suit to recover possession of certain land in the village which was held by the defendant rent-free, in consideration of rendering services as *Khera patis* on the ground that he was entitled, as zamindar, to dispense with their services, and that therefore they no longer possessed any right to hold the land. The claim was resisted by the *Khera patis* on the ground that for many years they had been in possession of the land as muafi holders. Held that the dispute so raised was a matter which could form the subject of an application to resume a rent-free grant.....(*Tika Ram* v. *Khuda Yar Khan*, I. L. R., 7 All. 191).

Burden of proof :—The burden of proving that the land is held rent free for the performance of some specific service lies on the proprietor (*Musammat Imam Bandi Begam* v. *Hanuman Ram*, S.D.B.R., No. 12 of 1893).

Sub-section (2) :—If the suit for resumption of rent-free grants be barred by limitation, the suit will not be dismissed but the Court will proceed to determine under section 156 whether it is liable to assess-

ment of rent or whether under section 158 the holder thereof is liable to pay the revenue assessed thereon (vide section 153).

Limitation, Jurisdiction, suit, appeal, review and revision :—For the period of limitation within which suits to resume rent free grants should be brought *vide* sub-section (2) of this section.

Suits for the resumption of rent-free grants should be filed in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division ; such suits should be filed in the Court of the Collector [sec. 174 (*b*)]. Such suits would be disposed of by an Assistant Collector of the first class (sec. 172) or by the Collector (sec. 173 . An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [sec. 180 (1)] will lie to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E. Serial No. 53). A second appeal on any of the grounds specified in sec. 584 of the Code of Civil Procedure will lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs (sec. 181) within ninety days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 54).

As to review vide sections 183 and 184.

As to revision vide section 185.

Court-fee :—The Court-fee payable on a plaint or a memorandum of appeal will be computed according to the annual letting value of the land as estimated by the plaintiff (4th Schedule, Group E, Serial No. 36 column sixth).

Order of ejectment when the land is resumed.

155. If the Court orders the grant to be resumed, it shall at the same time pass a decree for the ejectment of the holder subject to the provisions of sections 73 to 76 which shall apply as if the holder had been a tenant.

This section is new. Under Act XII of 1881, after a decree for resumption was passed fresh proceedings had to be instituted to eject the holder but in this section it is now enacted that if the Court orders the grant to be resumed, it shall at the same time pass a decree for the ejectment of the holder.

'As if the holder had been a tenant' :—This section, though it extends the provisions of sections 73 to 76 of the Act to the ex-grantee as though he were a tenant, says nothing about his right to improve-

ments (*Maharaja Raja Ranji* v. *Abdulla Khan*, S. D. B. R., No. 4 of 1904).

Rent-free land when liable to assessment of rent.

156. Land not liable to resumption under section 154 and to which the provisions of section 158 do not apply shall be liable to assessment of rent.

This section is new.

Limitation, Jurisdiction, suit, appeal, Review and Revision :—There is no period of limitation for suits for the assessment to rent of a rent-free grant [sec. 152 (2)]; and 4th Schedule, Group C, Serial No. 37, columns 4 and 5. As to jurisdiction and appeal see notes under section 154.

As to review *vide* sections 183 and 184.

As to revision *vide* section 185.

Court-fee :—The Court-fee payable on a plaint or memorandum of appeal will be computed according to the annual letting value of the land as estimated by the plaintiff (4th Schedule, Group C, Serial No. 37 Column sixth).

Determination of class of tenure and rent.

157. (1) When a rent-free grant is found to be liable to have rent assessed thereon, the grantee shall be deemed to have been a tenant from the date of the grant, and the class of his tenancy shall be determined in accordance with the provisions of this Act.

(2) If the grantee is so declared to be an occupancy tenant, the rent shall be decreed at the prevailing rate paid by occupancy tenants for land of similar quality and with similar advantages in the neighbourhood.

(3) If the grantee is so declared to be a non-occupancy tenant, the rent shall be decreed at such rate as the Court may determine to be fair and equitable, having regard to the rents paid by non-occupancy tenants for land of similar quality and with similar advantages in the neighbourhood.

(4) A non-occupancy tenant whose rent has been so fixed shall be entitled to hold the land at that rate for a period of seven years, and the decree shall have the same force and effect as a registered lease under the provisions of section 11.

(5) The rent decreed under sub-section (2) or sub-section (3) shall be payable from the first day of July next following the date of the institution of the suit.

This section is new.

Sub-section (2) :—Although a right of occupancy cannot be acquired in land assigned and held in lieu of wages, yet on proof of the custom by which old established tenants on being appointed Mucaddams of a village were allowed to hold their land rent-free, the presumption will be strong that previous to such appointment they had acquired occupancy rights in such land, and are still occupancy tenants (*Kanhya Lall* v. *Bhura Singh*, 1 L. R., R. R. S. 179).

When rent-free tenure confers proprietary right.

158. Land not liable to resumption under section 154 and which has been held rent-free for fifty years and by two successors to the original grantee, and land which was acquired in perpetuity in consideration of the loss or surrender of a right previously vested in the grantee, or by a written instrument and for a valuable consideration, shall be deemed to be held in proprietary right; and the Court shall declare the holder of such land to be the proprietor thereof, and to be liable to pay the revenue thereon and shall determine the revenue payable by him.

This section corresponds to sec. 30 (*d*) of Act XII of 1881.

Effect of resumption of revenue free land :—The position of the mortgagee of revenue free lands, the subject of an usufructuary mortgage, which after the date of such mortgage were resumed by Government, and afterwards farmed to a stranger, in consequence of the inability of the mortgagee with whom the settlement of the mortgaged land had been

made to meet the Government demand, is not affected by the act of resumption, nor has such act the effect of rendering the possession of the mortgagee adverse to the mortgagor. After the expiration of the term of farm, the mortgagee under such circumstances reverts to precisely the same position which he occupied before the farm. (*Makhdum Baksh* v. *Makhana Koer*, 1 L. R., H. C. S., 3).

'Held rent free for fifty years' :—In a suit to resume a rent free holding on the ground that the tenure had been created by a sanad less than fifty years, and that by a clause in the village administration paper the grant was resumable at will, it was found that the land had actually been held rent free by the ancestors of the holder for many years prior to the date of the sanad, and that they had not been the parties to the administration paper. *Held* that the sanad only confirmed an already existing grant, that the grantee's title could not be prejudiced by the entry in the administration paper, and that the resumption was barred by the lapse of the statutory period of prescription (*Daulat Singh* v. *Raja Pirthee Singh*, 1 L. R., R. R. S. 186).

'Deemed to be held in proprietary right' :—Held that the interest in land reserved rent free in a deed of sale when the vendee is liable for the land revenue thereof is an under-proprietary interest, and the fact that the reservation was made for consideration is no bar to assessment to revenue under the law of resumption (*Munshi Govind Prasad* v. *Suraj Baksh*, S. D. B. R. No. 4 of 1903). In another case the parties were recorded as Zamindar and tenant in a rent free grove. When it came under cultivation it was assessed to revenue and an engagement to pay the same taken from the zamindar. *Held*, that the mere payment to Government by the tenant of the revenue assessed on the land does not constitute him the proprietor, and that the relation of zamindar and tenant exists between the parties (*Girwar Sahai* v. *Janki Prasad*, S. D. B. R. No. 3 of 1888).

Limitation, jurisdiction, suit, appeal, review and revision :—There is no period of limitation for suits for the assessment to revenue of a rent-free grant (4th Schedule, Group C, Serial No. 38, Columns 4 and 5).

Suits for the assessment to revenue of a rent free grant should be filed in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the subdivision such suit should be filed in the Court of Collector [sec. 174 (*b*)]. Such suits would be disposed of by an Assistant Collector of the 1st class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the first class or from that of a Collector [sec. 180(1)] will lie

to the Commissioner (sec. 179) within sixty days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 53). A second appeal on any of the grounds specified in section 584 of the Code of Civil Procedure will lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs (sec. 181) within ninety days from the date of the decree appealed against (4th Schedule, Group E, Serial No. 54)

As to review vide secs. 183 and 184.

As to revision vide sec. 185.

Court fee :—The court fee payable on a plaint or a memorandum of appeal will be computed according to the annual letting value of the land as estimated by the plaintiff (4th Schedule, Group C, Serial No. 38, column sixth).

CHAPTER XI.

ARREARS OF REVENUE, PROFITS, &C.

The Select Committee in their report on this Chapter printed at page 77 of the N.-W. P. & O. Gazette, dated 22nd June, 1901 say :—

"Neither in Act XII of 1881, nor in the Bill as introduced, are there any substantive sections conferring a right to sue for arrears of revenue and for profits. Such right is only to be inferred from the list of suits excluded from the cognizance of the Civil Courts. We think it is advisable to deal with these suits by substantive sections, and more specially as it allows certain provisions relating to suits for profits to be put in their appropriate place and gives an opportunity for introducing other provisions which appear to be necessary." . . . . . "The procedure to be followed in suits under this Chapter when the plaintiff's proprietary right is denied is laid down in section 203 *G* (now sec. 201)."

Suit for arrears of revenue, &c., by lambardar.

159. A lambardar may sue a co-sharer for arrears of revenue payable to Government through the lambardar by such co-sharer, and for village-expenses and other dues for which such co-sharer may be liable to the lambardar.

This section corresponds to section 93(*j*) of Act XII of 1881.

Twofold remedy :—Under the present law the lambardar is given a twofold remedy for the recovery of arrears of revenue paid by him on behalf of a co-sharer ; i. e., a lambardar can recover :—

(1) by a suit under this section ; or

(2) by an application under section 184 of Act No. III of 1901. Section 184 is as followes :—

"Any lambardar who has paid an arrear of revenue due on account of the share of any cosharer whom he represents may, within six months from the date of such payment, apply in writing to the Collector to recover such arrear, together with any fees due under section 144, on his behalf as if it were an arrear of revenue payable to Government.

"The Collector shall, on receipt of such application, satisfy himself that the amount claimed is due to the ambardar, and may then, subject

to rules made under section 234, proceed to recover, as if it were an arrear of revenue, such amount, with costs and interest, from the said co-sharer or any person in possession of his share. The Collector shall not be made a defendant to any suit in respect of an amount for the recovery of which an order has been passed under this section.

"No appeal shall lie from an order of a Collector under this section; but nothing herein contained, and no order passed under this section, shall debar a lambardar or a co-sharer from maintaining a suit under Chapter XI, North Western Provinces Tenancy Act, 1901, or section 108, Ondh Rent Act, 1886, as the case may be."

Lambardar :—For definition of the term see page 32 supra. The word lambardar would include also the heirs, legal representatives, executors, administrators, and assigns of such persons (vide sec. 166). A suit against a co-sharer and the transferees of his share for arrears of Government revenue which became due before such transfer, the plaintiff claiming as lambardar and as heir, to the deceased lambardar during whose incumbency such arrears became due, was cognizable in the Revenue Courts (*Gauri Dat* v. *Wazir Mahammad Khan*, W. N. 1882, 78; I. L. R. 4 All. 412). The heirs of a lambardar who has paid the Government revenue on behalf of certain land, cannot, when seeking to recover the same as charge on the property in the hands of subsequent vendees, succeed without proving, as against those vendees, notice that the Government revenue had been paid by the lambardar, as alleged, on behalf of the land purchased by them (*Kushhal Chand* v. *Nizam-un-Nissa*, W. N. 1891, 9). *Held*, that though the extent of each of the defendant's shares in a resumed *muafi* plot was defined, the lambardar had the right, as no distribution of the revenue had ever been made among the defendants of suing them jointly for arrears of revenue (*Munna Lall* v. *Kafayat Ulla*, S. D. B. R. No 10 of 1884).

'May sue' :—In *Ali Ahmad* v. *Baldeo Singh* (W. N. 1881, p. 46) it was held by Spankie and Oldfield, J.J., that a suit by a co-sharer for money payable to him by another co-sharer for money paid by him for Government revenue as lambardar, where the plaintiff is at the time of suit no longer lambardar, is cognizable in the Civil Courts and not in the Revenue Courts. This principle was dissented from in *Shib Singh* v. *Sita Ram*, W. N. 1883, p. 8 and also in *Misr Bhagwan Das* v. *Bhagwan Das*, S. D. B. R., No. 1 of 1892.

"Co-sharer" :—i. e., whether recorded or not. The Select Committee in their report printed at page 77 of the N.-W. P. and O. Gazette, dated 22nd June, 1901 say :—

"We have omitted the word 'recorded' throughout these sections as the only effect of inserting it is to leave to a co-sharer, who is not

recorded the right to sue in the Civil Court. We think these suits should be heard only in the Revenue Courts, whether the parties' names are recorded, or not. Moreover to allow persons to sue in the Civil Court simply because their names are not recorded would be to defeat the policy of section 35 of the North Western Provinces and Oudh Land Revenue Bill." The word co-sharer would include also the heirs, legal representatives, executors, administrators and assigns of such persons (Sec. 166). Thus co-sharer would include also Thekadars and mortgagees in possession, (*Ram Kishan Das* v. *Tonda*, S. D. B. R. No. 6 of 1888). Where a lambardar brought a suit for arrears of land revenue payable by the proprietors against several defendants of whom some were co-sharers and others mortgagees in possession :—*Held* that such suit was one of the nature contemplated by Sec. 93 (*g*) of the North Western Provinces Rent Act, 1881, and was cognizable by a Court of Revenue as against all the defendants (*Lachman Singh* v. *Ghasi*, W. N. 1893, p. 63). It does not mean only actual proprietary co-partners, but all who occupy their places, such as transferees and mortgagees of their rights, especially where they are recorded as the responsible *malgoozars* in the Collector's books. (*Gokul Dass* v. *Balmakund*, S. D. A., N.-W. P. 698 of 1864, Nov. 25th 1864).

Arrears of revenue :—This term is defined in Sec. 143 of the N. W. P. and Oudh Land Revenue Act. Secs. 142, 143, and 144 of the Act run as follows :—" Section 142 :—All the proprietors of a *mahal* are jointly and severally responsible to Government for the revenue for the time being assessed thereon, and all persons succeeding to proprietary possession therein otherwise than by purchase under section 160, shall be responsible for all arrears of revenue due at the time of their succession.

Explanation :—" Proprietor " in this Chapter means a person in proprietary possession for his own benefit, and includes a mortgagee and a lessee of proprietary rights.

" Section 143. —The revenue shall be paid in such instalments, to such persons and at such time and places as may be prescribed by rules made under section 234, and any sum not so paid becomes an arrear of revenue, and the persons responsible for it, whether as co-sharers or as lambardars, become defaulters.

No interest shall be demanded on any arrear of revenue.

" Section 144.—The revenue shall be paid through the lambardar, who, subject to rules made under section 234, shall be remunerated by such fees, to be paid by the other proprietors ; not exceeding five per cent, on the revenue payable in respect of their shares, as the Board may prescribe."

Interest on arrears of revenue :—*Held*, that in a suit brought by a lambardar to recover arrears of land revenue which he has paid on behalf of a co-sharer, it is proper for the Court to award interest on such arrears (*Lala Ganesh Prasad* v. *Bachu*, S. D. B. R, No. 7 of 1886).

Payable :—does not mean that the revenue should have been actually paid by the lambardar, the cause of action accrues when the arrears, become due and limitation also runs from that date (4th Schedule, Group A. Serial No. 8.)

Suit against auction purchaser :—A suit was brought by a lambardar against the auction purchaser of the zamindari interests of a co-sharer for arrears of revenue in respect of the years 1883 and 1884. It appeared that the auction sale held on the 27th November 1882, was not confirmed in his favour until the 18th June 1883. It was held that under the circumstances the plaintiff could not recover the arrears of revenue paid by him for 1883, but that he could recover the arrears for 1884 (*Khem Karan Singh* v. *Than Singh*, W. N. 1888, p. 248).

Village expenses :—Sums due under a decree of Court or for the costs of a law suit are not legitimately village expenses, and cannot be included therein. But the wages of a kairnda and peon, if employed, and their employment is considered expedient, and necessary is a proper item (*Rasil Roy* v. *Utrajo Kooer*, S. D. A., N. W. P., 868 of 1865, Nov. 27th, 1865). A lambardar is entitled to recover from his co-sharers the village expenses agreed to in the wajib-ul-arz (*Farzand Ali* v *Wazir* Ali, S. D. B. R., No. 5 of 1886).

Lambardari dues :—When lambardari fees are allowed by the terms of the Wajib-ul-arz, and have been recovered by suit in past years, they must be awarded, though they may have remained in abeyance for some time (*Musammat Gondali* v. *Devi Das*, S. D. B. R. No. 23 of 1884) The plaintiff was the lambardar, but the defendant co-sharer paid his revenue direct and made his own collections from the tenants.

The question was whether the plaintiff (lambardar) was entitled to recover *lambardari* dues at 5 per cent from the defendent. *Held*, on a reference of the Deputy Commissioner of Lucknow, that the plaintiff was entitled to receive *lambardari* dues (*Jaskaran Singh.* v. *Maharaj Singh.* Rev. Law Journal, Vol I. p. 70).

Other dues :—e. g., cesses. These are dealt with in secs. 56 and 86 of the N.-W. P. and Oudh Land Revenue Act No. 111 of 1901 which are as follows :—

"Section 56,—In the North-Western Provinces all cesses which are payable by tenants on account of the occupation of land, and which are of the nature of rent payable in addition to the rent of tenants, or in lieu of which proprietary rights may be assigned under sec. 78, clause

(b) shall be recorded by the Record Officer under the appellation by which they are known, and no cesses not so recorded shall be recoverable in any Civil or Revenue Court.

Section 86.—(1) A list of all cesses other than those referred to in sec. 56, levied in accordance with village custom shall, if generally or specially sanctioned by the Local Government, be recorded by the Settlement Officer, and no cesses not so recorded shall be recoverable in any Civil or Revenue court ; and no such list shall be altered or added to during the currency of settlement.

(2) The Local Government may from time to time impose on the collection of any cesses so sanctioned such conditions as to conservancy, police, or other establishments connected with the village, bazar, or fair in or on account of which the cesses are levied as it thinks fit.

(3) The Governor-General in Council may, in case of doubt declare what shall be a cess within the meaning of this section.

(4) This section shall not apply to Oudh, unless and until a list of cesses, as aforesaid, has been recorded by the Settlement Officer at a revision of settlement in the manner prescribed in this section."

Burden of proof :—In a suit by lambardar, who only had the power to collect rents, against a co-sharer to recover the co-sharer's portion of Government revenue paid by the lambardar, it lies upon the plaintiff to show that he had in his capacity of lambardar exercised due diligence in the collection of rents (*Dharam Pal* v. *Madan Mohan* W. N. 1892, p. 72).

Collection of rent by lambardar and its application :—The rents of an estate should be applied to the payment of the Government revenue, and unless it can be shown that other arrangements have been especially assented to by the share-holders, the lambardar is not competent to apply the rents to the liquidation of outstanding debts and then sue his share-holders for their quotas of balance of Govt., revenue. The debts of the estate are a totally distinct matter, the payment of which may either be provided for by amicable arrangement among the brotherhood, or they may be recovered by Civil suit (*Beni Prasad* v. *Kowal Singh*, S. D. A., N. W. P., 731 of 1860, Novr, 16 th, 1861).

Payment of revenue by one co-sharer is no charge on the estate :—There is no general principle of equity to the effect that whoever, having an interest in an estate, makes a payment in order to save the estate, obtains a charge on the estate, and therefore, in the absence of statutory enactment, a co-sharer who paid the whole revenue and thus saved the estate, does not, by reason of such payment, acquire a charge on the share of his defaulting co-sharer. The Legislature had not given or recognized any right of charge or

lien on an estate in favour of a person paying Government revenue for it, or provided any means by which such a charge could be enforced ; such charge would be at variance with the policy and intention of the Government as disclosed in its legislative enactments (*Seth Chitor Mal* v. *Shib Lal*, I L. R., 14 All., 273 ; W. N. 1892, 117 ; *Kinu Ram Dass* v. *Mozaffar Hosain Shaha* I. L. R, 14 Calc, 809 ; *Abdul Rahman Khan* v. *Bhawani Din*, S. D. B. R., No. 7 of 1883).

Questions of proprietary right :—When in a suit under this section the plaintiff's proprietary right is denied the procedure to be followed in such case is laid down in sec. 201.

Limitation, Jurisdiction, suit, appeal, review and revision :—Suits by a lambardar to recover from a co-sharer arrears of revenue, village expenses and other dues should be brought within three years from the date when the arrears become due (4th Schedule, Group A, Serial No. 8). (1) such suits in which the value of the subject matter does not exceed one hundred rupees should be filed in the court of Tahsildar [sec. 174 (a)]. They would be disposed of by an Assistant Collector of the second class (sec. 171). An appeal will lie to the Collector from the decree of an Assistant Collector of the second class in such cases [sec. 176 (a)] within thirty days from the date of the decree appealed againt (4th Schedule Group E, Serial No. 52). An appeal will lie to the District Judge from an appellate decree of a Collector if (a) question of proprietary title has been in issue in the first appellate court, and is a matter in issue in the appeal ; or (b) a question of jurisdiction has been decided [sec. 180 (2)] within thirty days from the date of the decree appealed against (Indian Limitation Act XV of 1877, second Schedule, second Division, Art. 152). The decision of the Judge will be final, as no appeal will lie to the High Court from the decree in appeal of a District Judge under sec. 181, that section allowing only a seccond appeal and not a third one. If however no appeal can be preferred to the District Judge on account of the case not coming under the provisions of sec. 180 (2), an application for revision may be made to the Board under sec. 185. As to review vide secs. 183 and 184. As to revision vide sec. 185.

(2) Suits under this section in which the value of the subject matter exceeds one hundred rupees should be filed in the court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in charge of the sub-division such suits should be filed in the court of the Collector [sec. 174 (b)]. Such suits will be disposed of by an Assistant Collector of the first class (sec. 172). or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the 1st class or from that of a Collector [sec.

180 (1)] will lie to the District Judge within thirty days from the date of the decree appealed against (Indian Limitation Act, XV of 1877, second Schedule, Second Division Art. 152) under the provisions of sec. 177; provided that when the amount or value of the subject matter of the suit exceeds five thousand rupees, the appeal will lie to the High Court (sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act, XV. of 1877, second Schedule, second Division, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of Chapter XLII of the Code of Civil Procedure (sec. 182) within ninety days from the date of the deeree appealed against.

As to review vide secs. 183 and 184.

Court fee:—The Court fee payable on a plaint or a memorandum of appeal will be computed according to the amount claimed [The Court Fees Act. 7 of 1870, sec. 7 (ii)].

Suit for arrears of revenue by co-sharer.

160. A co-sharer who pays arrears of revenue on account of another co-sharer who defaults may sue such co-sharer for the amount so paid.

This section corresponds to sec. 93 (K) of Act. XII. of 1881.

'Co-sharer':—See under sec. 159.

'Arrears of revenue':—See under sec. 159.

Payment of revenue by person wrongfully in possession of land:—B, who was in wrongful possesion of land which by right belonged to K. collected rents and paid the Government revenue. K. eventually established her title to the property, obtained possession, and recovered the rents from the tenants, and B. was obliged to refund the same. Subsequently B. sued K. to recover the sum which he had paid on account of revenue. Held that the claim did not fall within the provisions of secs. 69 and 70 of the Contract Act. IX., of 1872, and the fact that the plaintiff had been a loser by his wrongful act, or that the defendant had been benefited by the payment he made, would give him no right of action against her (*Binda Kuar* v. *Bhonda Das*, I. L. R, 7 All., 660; W. N. 1885, p. 176).

Payment of revenue to save estate from sale—contribution:—Where a village was in arrear through the deficiency of a former lambardar, and the plaintiff, having purchased at auction the share of the lambardar and not his rights and liabilities, had to pay the revenue to save the estate, it was held that the plaintiff had a right to call upon his cosharers to contribute their quota of Government revenue, the cosharer's

remedy being against the defaulting lambardar (*Fuzul Ali* v. *Jumna Doss*, 1 Agra, 229).

Payment of revenue by one cosharer is no charge on the estate :—See under sec. 159.

Suit against the lessee of a defaulting cosharer :—A co-sharer who has paid his own and his defaulting co-sharer's share of the Government revenue can recover from the latter his share of the Govt. revenue, but he cannot recover it from the latter's lessee, who is entitled to the profits of the lease after payment of rent to his lessor ; and even if the lessee has not paid rent to the lessor, that is a question between him and the lessor only (*Bykunt Nath Acharjee* v. *Gooroo Churn Bose*, 7 W. R., 247).

Arrears of revenue paid by purchaser not recoverable from vendor :—On the date of the purchase of a revenue paying estate there were arrears of revenue due. The instrument of sale was silent as to the party liable to pay such arrears. The purchaser was compelled to pay such arrears. Held that the purchaser could not recover the money so paid from the vendor (*Dost Mohammad* v. *Sanjad Ahmad*, I. L. R., 6 All ; 67).

Suit by auction purchaser for arrears of revenue paid between the date of sale and the date of its confirmation :—A sale in favour of an auction purchaser does not become absolute until it is confirmed ; in other words, he does not obtain an absolute proprietary title in respect of which he can claim to be a cosharer. He cannot therefore recover arrears of revenue paid between the date of sale and the date of its confirmation (*Khem Karan Singh* v. *Than Singh*, W. N., 1888, p. 248).

Interest on arrears of revenue :—See unde sec. 159.

Set off :—Vide sec. 193 (g).

Limitation, jurisdiction, suit, appeal, review and revision :—Suits under this section should be brought within three years from the date when the arrears are paid (4th Schedule, Group A, Serial No. 9). As to other matters vide under sec. 159.

Court fee :—See under sec. 159.

Suit for arrears of revenue by muáfidár, &c.

161. A muáfidár or assignee of revenue may sue for arrears of revenue due to him as such.

This section corresponds to sec. 93 (*i*) of Act. XII. of 1881.

'Muafidar' :—Includes the heirs, legal representatives, executors, administrators and assigns of such person (Sec. 166).

Suit between co-muafidars :—A suit brought by one sharer

in a muafi-holding against another sharer in that holding to recover his share of the revenue payable to the muafidar by the Zamindars does not lie under sec. 93 (*i*) of Act. XII, of 1881 (corresponding to this section) [*Abdul Karim* v, *Fazal Azim*, S.D.B.R., No. 4 of 1893 ; W. N., 1893, p. 102]. But this ruling was dissented from in *Sheodarshan Das* v. *Ahsan Ali* (W. N., 1904, p. 129 ; Rev. L. J. Vol. I., 109) where it was held that the provisions of section 93, clause (*i*) (corresponding to this section) of Act, XII., of 1881 are wide enough to include a suit by a *muafidar* against another *muafidar*, who was appointed a *lumbardar* to collect the assigned revenue payable by the Zamindars, to the *muafidars*, to recover the plaintiff's share of such assigned revenue.

Arrears of assigned revenue not a prior charge :—Muafidars or assignees of Government revenue ar not in precisely the same position as the Govt. itself would have been, and possessed of identical rights and powers, in respect of the recovery of arrears of revenue due to them. An arrear of assigned revenue is not a prior charge on the property in respect of which it is payable, against all the world. The effect of the provisions of sections 93 (*i*), 171, and 177 of Act. XII, of 1881 is to show that what the Legislature contemplated was to place the revenue assigned to a muafidar upon the same footing as rent ; that therefore, in order to recover an arrear of revenue, a muafidar must bring a suit in the Revenue Court ; that, upon obtaining a decree he may apply for execution against the immoveable property of the Judgment-debtor ; that, where such property is a mahal, the Collector may make certain arrangements, for discharge of the debt ; and that, failing such arrangement, such immoveable property may be sold, subject to any incumbrances that may be upon it (*Bithal Das* v. *Harphal*, I.L.R., 6 All., 503 ; W. N., 1884, p. 176).

Conversion of joint into separate liability of zamindars for payment of revenue to muafidar :—A partition was made by the Zamindars of their respective holdings and of their joint liability for the Govt. revenue, and though this partition was not carried out by the Revenue Court, but was acted upon by the Zamindars, and the assignee of the Government revenue also consented to such partition by accepting revenue from individual Zamindars, and by holding them to be individually responsbile for the amount due in respect of their several holdings. Held that, there was nothing to prevent the muafidar, who is the assignee of Government revenue, from assenting to any arrangement which the Zamindars may make for the conversion of their joint into separate liability (*Surnomoye* v. *Ram Churn Singh*, 3 Agra, 251).

Interest on arrears of assigned revenue :—An assignee of

Government revenue cannot sue for interest on arrears. A, assignee of Government revenue, sued B for arrears of revenue and interest thereon in regard to one *khata*, and got a decree which included interest, and in a subsequent similar suit in regard to another *khata*, B. again resisted A's claim for interest. Held by Banerji, J., that the fact that the reason upon which the former judgment was based was equally applicable to the second case did not give the former judgment the force of *res-judicata* in the second case. Held by Aikman, J., that the former judgment did operate as *res-judicata* (*Chandi Prasad* v. *Maharaja Mohendra Singh*, I. L. R., 23 All., 5 ; W. N., 1900, p. 173).

Set off :—Vide sec. 193 (g).

Limitation, jurisdiction, suit, appeal, review and revision :—Suits under this section should be brought within three years from the date when the arrears become due (4th Schedule, Group A, Serial No. 10). As to other matters see under sec. 159.

Court-fee :—See under sec. 159.

Suit for arrears of revenue or rent by taluqdar, &c.

162. A taluqdar or other superior proprietor may sue for arrears of revenue or rent due to him as such.

This section corresponds to sec. 93 (j) of Act XII of 1881.

'Taluqdar or other superior proprietor':—would include also the heirs, legal representatives, executors, administrators and assigns of such person (sec. 166).

Suits for arrears of Malikana:—Suits for arrears of malikana are cognizable by Revenue and not by Civil courts. (*Ram Churun* v. *Gunga Pershad*, 2 N. W. P., 228).

Set off :—Vide sec. 193 (g).

Limitation, Jurisdiction, suit, appeal, review and revision :—Suits under this section should be brought within three years from the date when the arrears become due (4th Schedule, Group A, Serial No. 11). As to other matters see under sec. 159.

Court fee :—See under sec. 159.

Profits when divisible.

163. In the absence of any determination of the date by the Settlement Officer, or of an express arrangement among the co-sharers, profits shall be divisible on such dates as the Local Government may, by rules made under this Act, prescribe.

This section corresponds to the last paragraph of sec. 94 of Act. XII of 1881.

Determination of the date by the Settlement Officer :—*i.e.*, under sec. 85 (*c*) of the N. W.-P. and Oudh Land Revenue Act.

If the profits be not paid on the dates so fixed, they would become arrears and would give rise to a cause of action under secs. 164 and 165.

For dates fixed by the Local Government on which profits will be divisible vide Appendix (B).

164. (1) A co-sharer may sue the lambardar for his share of the profits of a mahal, or of any part thereof.

Suit for profits against ambardar.

(2) In any such suit the Court may award to the plaintiff not only a share of the profits actually collected, but also of such sums as the plaintiff may prove to have remained uncollected owing to the negligence or misconduct of the defendant.

Sub-section (1) :—This sub-section corresponds to sec. 93 (h) of Act XII of 1881.

The Select Committee in their report printed at page 77 of the N. W. P. and O.Gazette, date 22nd June, 1901 say :—"We have distinguished the cases of a suit for profits against a *lambardar* and against a co-sharer as they appear to be on a somewhat different footing (see secs. 171O and 171 P. corresponding to sections. 164 and 165)"

Lambardar :—Vide definition at page 32. The word 'lambardar' would include also the heirs, legal representatives, executors, administrators and assigns of such person (sec. 166). Where profits received by *lambardar* are not taken by him as *lambardar* but in his individual character under a supposed mortgage title, such profits are not recoverable by a suit for profits in the Revenue Court (*Khoob Singh* v. *Balwaut Singh*, 2 Agra 302). A suit for profits cannot be brought against a person employed by the lambardar to make collections on his behalf (*Durgia* v. *Udai Ram*, W. N. 1887. p. 297). But the nephew of a lambardar who, as the agent of and in conspiracy with the lambardar, appropriated profits which should have been paid over to a co-sharer, was jointly liable with the lambardar on a suit by the assignee of such profits of the co-sharer (*Bhajjumal* v. *Bhagwan Das*, W.N., 1898, 31).

Co-sharer :—Vide under sec. 159.

Who are Co-sharers within the meaning of the section :— A suit by a *lambardar* is cognizable by the Revenue Court (*Mahomed Ghous* v. *Kurreem-oon-nissa*, Agra, Rev., 52). A suit lies in the Revenue Court for a share of profits against the lambardar, although plaintiff collects her own rents, and pays in separately her quota of the Government revenue (*Salamut Bebee* v. *Bhagwan Dass*, 2 N. W. P., 33). The lessee of a co-sharer is entitled to sue another co-sharer for his share of the profits (*Debi Saran Lal* v. *Debi Saran Upadhia*, S. D. B. R., No. 3 of 1883). The mere circumstance of the names of the plaintiff and the defendant being jointly recorded as co-sharers without specification of separate or fractional shares will not bar a suit under sec. 93(*h*) of Act XII., of 1881 (*Khushal* v. *Ram Das*, W. N., 1889, p. 171 ; *Shib Sankar Lal* v. *Banarsi Das*, I. L. R., 7 All., 891 ; W. N., 1885, p. 287). A *muafidar* can recover from another *muafidar* who was appointed lambardar to collect the assigned revenue payable by the Zamindars to the *muafidars* the plaintiff's share of such assigned revenue (*Sheo Darshan Das* v. *Ashan Ali*, Rev. L.J. Vol. I p. 109 ; W. N., 1904, p. 129).

Who are not co-sharers within the meaning of the section :— Parties who have taken a joint lease of a village from its Zamindar, and who have agreed to share the profits thereof rateably, are not co-sharers in the sense of sec. 93 (h) of Act XVIII of 1873 (corresponding to this sub-section), but co-partners, and where one of such parties seeks to recover from the other profits retained by the latter in excess of his share, his remedy lies in a suit for an account in the Civil Court, and not in a suit under sec. 93 (h) of Act XVIII of 1873 (*Mahipat* v. *Radhu*, 1 L. R. H. C. S., 2). Where a mortgagor obtaining possession of the mortgaged property by redemption sued the mortgagee for the profits of certain years as due to him by the latter ; Held that the question being not between co-sharers but between mortgagor and mortgagee was not cognizable by the Revenue Court (*Praim Sookh* v. *Abbas Ali*, 2 Agra, Rev., 4). Having regard to sec. 11 of the Civil Procedure Code, a suit for the recovery of certain sums of money as the plaintiff's share of rent alleged by them to have been wrongfully received by the defendants, their co-sharers, and in which the plaintiff's right to receive any portion of the rent claimed is denied by the defendants, is not barred from the cognizance of the Civil Courts by sec. 93 (h) of the N. W. P. Rent Act. That provision does not contemplate suits in which such claims of title are so made and resisted (*Mahadeo Singh* v. *Bachu Singh*, W. N. 1889, p. 87) The respondents (Zamindars) could not sue the appellants (assignees of land revenue) to recover arrears of Zamindari dues payable to them by the appellants under sec., 93 (h), Act XII of 1881, as they are not co-sharers with the appellants, and

that as the law at present stands such a suit must be brought in the Civil Courts (*Bhawan Das* v. *Kazi Imdad Ali*, S. D. B. R., No. 9 of 1891). A person who is merely in cultivatory occupation of some Khudkasht land in a mahal is not a person in receipt of profits of the mahal so as to be entitled to sue under sec. 93 (*h*) of Act. XII. of 1881. (*Anar Devi* v. *Munshi Ram*, W. N. 1899, p. 62). A suit for profits under sec. 93 of the N.-W. P. Rent Act, 1881, cannot be maintained by one member of a joint Hindu family against another member of the same joint family (*Chandi Prasad* v. *Jwala Prasad*, W. N. 1899, p. 206).

Conditions precedent to a suit under this section :—In order to bring a suit under this sub-section the co-sharer must have been in possession of his share for the period for which he claims the profits. If he has been out of possession his remedy lies in the Civil Courts (*Shunker Lall* v. *Ram Lall*, 1 N. W. P. 256). An ex-co-sharer may sue in the Revenue Court for his share of the profits during the time he was in possession (*Hur Narain* v. *Shiam Soonder*, 3. N. W. P., 112). In order to establish a right to sue under sec. 93 (h), Act XII of 1881, a person must be a co-sharer at the time the profits for which he sues were due, He need not be a co-sharer at the time of the institution of the suit (*Misr Bhagwan Das* v. *Bhagwan Das*, S. D. B. R., No. 1 of 1892.)

When civil suit not necessary :— When the plaintiff is admittedly a co-sharer, it is not necessary for him to bring a civil suit against the defendant before he can maintain a suit in the Revenue Court for his share of the profits. The defendant as lambardar of the village is bound to give to the plaintiff the profits of his share (*Chakko Begum* v. *Aijaz Ali*, W. N. 1882 p. 208.)

Non receipt of profits for more than twelve years—adverse possession :—The mere entry of names in the absence of any reliable proof of enjoyment of profits within twelve years before the institution of a suit does not make one entitled to profits (*Maksood Ali Khan* v. *Ghazee-ood-deen Khan*, 3 Agra, 158). Where certain sharers took in lieu of their proportion of profits a piece of land rent free, with an agreement that on relinquishing the land they might claim their share of the profits, it was held that they could not be said to have been at any time out of possession of their shares so long as they held the land, and that on relinquishing the land they might sue for profits (*Seetal Singh* v. *Luchman Singh* 3 N.-W. P., 23). A lambardar may obtain adverse possession of the share of a co-sharer by withholding and appropriating to his own use the profits thereof, a lambardar not being a trustee of the shares of the co-sharers, although he may be bound to pay them the profits of their shares (*Tulshi Singh* v. *Lachman Singh*, W. N., 1881 p. 20). The mere circumstance that a co-sharer's name is recorded in the Revenue papers will not prevent a suit by him for his share of profits

being barred by limitation if in fact he has received no profits for more than twelve years prior to such suit (*Muhammad Husain* v. *Badri Prasad*, W. N., 1895, p. 88). But in a suit to recover his share of the profits of certain *sir* land appertaining to an undivided mahal where the plaintiff had not been in receipt of profits in respect of the *sir* land in suit for more than twelve years but he and his predecessor in title had been in receipt of profits in respect of their shares of the rents and profits of the undivided mahal in question, continuously, it was held that the mahal being undivided, the defendant's possession of sir land, the profits of which were claimed, had never really been a possession hostitle to the plaintiff, and the suit was therefore not barred by limitation (*Raj Bahadur* v. *Bharat Singh*, W. N. 1905, p. 15). The fact that a co-sharer plaintiff in a suit against the lambadar for his share of the profits for three years antecedent to the suit has received no profits for twelve years previous to suit is not by itself sufficient to bar the suit in the absence of evidence that the defendant lambardar was during those twelve years holding adversely to the plaintiff (*Mihon Lal* v. *Badri Prasad*, W. N., 1905, p. 36; A. L. J. Vol. II, p. 33). It would be observed that in the last two cases it was expressly held that mere non-payment of profits for more than twelve years would not make the possession of the lambardar adverse. To make his possession adverse, the lambardar must have denied the plaintiff's title or set up an adverse title in himself some time before twelve years prior to the institution of the suit. In the last case noted above the words "a lambardar may obtain adverse possession of the share of a co-sharer by withholding *and appropriating* to his own use the profits thereof" were interpreted to mean refusal on the part of the lambardar after demand to pay any share of the profits to a co-sharer.

Omission to sue for part of claim :—On the 29th June, 1881, the appellant, the co-sharer of a mahal, sued the respondent, the lambardar, for the profits of his share in respect of the year 1285 F. At that time profits were due to him in respect of the year 1287 F; and, he might have also claimed such profits, but did not do so. In the present suit he sought to recover profits for 1287 F. Held that the appellant was barred by the terms of sec. 43 of the Code of Civil Procedure, from including in the present suit, the profits alleged to be payable for 1287 F. (*Chedu Singh* v. *Mahtab Singh*, W. N., 1883, p. 142). A recorded co-sharer of a mahal sued the lambardar for his share of the profits of the mahal for the year 1286 F. At the time of the institution of the suit, the profits for 1287 and 1288 F. also were due, but no claim was then made in respect of them. The suit was struck off on account of the non-appearance of the parties, with leave to the plaintiff to bring a fresh

suit. Subsequently the plaintiff brought a suit against the same defendant for his share of the profits of the mahal for 1287 and 1288 F. Held that the suit was not barred by the provisions of sec. 43 of the Civil Procedure Code. (*Mulchand* v. *Bhikari Das*, I. L. R., 7 All., 624 ; W. N. 1885, p. 129).

Agreement not to sue :—A suit was brought by the cosharers of a certain estate, against certain persons who acted as lambardars in respect thereof for their share of the profits for 1284 and 1285 F. The parties were also partners in business. The suit was defended on the ground that by an agreement the father of the defendants and the plaintiffs mutually covenanted to set up an idol in a certain temple and to build a '*kunj*' at Mathura, and that until these two works should be completed no partition should take place between them but the property should be held and the business of the firm be carried on jointly, and that when from the profits of the property or from money realized from collection of debts due to the firm the works should be completed, then either party would be competent to claim partition. Held that whether valid or invalid, the agreement could not be pleaded in bar of the suit in the Revenue Court (*Daya Ram* v. *Fateh Ram*, W. N. 1881, p. 107).

Profits :—The word 'profits' means not only rent in respect of the years to which the suit relates but also such arrears of rent as are actually realized by the lambardar during the year to which such suit may relate (*Nand Kishore* v. *Ram Rattan*, W. N. 1887, p. 250). Weighment dues, which were payable to the Zamindars in respect of a market held on land which formed part of a mahal, might properly be considered as part of the profits of the mahal within the meaning of sec. 93 (*h*) of Act XII of 1881 and that a suit for the recovery of such weighment dues would lie in the Revenue Court (*Baldeo Singh* v. *Beni Singh*, W. N. 1899, p. 57). But in *Kallu* v. *Chhote*, (S. D. B. R. No. 6 of 1887) the Board has held that a suit to recover weighing dues, not recorded under sec. 66, Act XIX of 1873, cannot lie in the Revenue Courts.

Calculating the amount of profits—set off :—As to set off vide sec. 193 (*g*). A lambardar, who had paid an arrear of Government revenue out of the collections of subsequent years without reference to the co-sharers was entitled, in a suit against him by a co-sharer for his share of the profits for such subsequent years, to claim in the suit a deduction on account of such payment (*Udai Singh* v. *Jagan Nath*, I. L. R., 1 All., 135). In calculating the amount of profits deductions should be made on account of payment of Government revenue, village expenses and other dues (sec. 159). *Sir*

expenses, *i.e.*, the expenses of cultivation of *sir* land held in partnership by the plaintiff and the defendant cannot be considered to be an item of village expenses (*Mulchand* v. *Bhikhari Das*, W. N. 1885, p. 129). In determining the amount of profits due to a co-sharer, the Court should not take notice of an alleged set off on account of food and clothing (*Musammat Tejni* v. *Jiva Singh*, S. D. B. R., No. 1 of 1887), nor should funeral expenses be set off (*Mula Kuar* v. *Ulfat Singh*, W. N. 1886, p. 172).

Signing Patwari's annual papers—no estoppel :—A formal signature by a co-sharer to the Patwari's annual papers is not an estoppel to a suit against the lambardar for profits not shown in the said papers, more especially where exception had formally been taken to the papers of a former year (*Gokul Parshad* v. *Bhagwant Singh*, S. D. A., N.-W. P., 846 of 1864, Nov. 25th, 1864).

Interest on Profits :—Interest may be allowed on profits due (*Tota Ram* v. *Sher Singh*, I. L. R., 1 All. 261).

Sub-section (2) :—This sub-section corresponds to sec. 209 of Act XII of 1881.

Negligence or misconduct—Burden of proof :—Where a co-sharer claims profits on the full rental of the mahal, and the lambardar pleads in reply that the actual collection fell short of that rental, the burden of proof lies on the co-sharer to show that the deficient collection was attributable to the misconduct of the lambardar, before he can succeed in getting a decree for a sum in excess of the actual collections (*Dhanak Singh* v. *Chain Sukh*, W. N. 1886, p. 1). The burden of proving negligence or misconduct rests in the first instance on the plaintiff. No general rule can be laid down as to the quantum of evidence which the plaintiff must give in order to shift the burden of proof on to the defendant. The mere production by the plaintiff of the *Jamabandi*, or rent-roll is not sufficient to cast upon the defendant the necessity of proving that there was no negligence or misconduct in him. Section 106 of the Indian Evidence Act does not apply to such a case (*Muhammad Inayat Husain* v. *Muhammad Karamat ullah*, W. N., 1890, p. 131). But in *Durgia* v. *Udai Ram*, (W. N., 1887, p. 297) where the lambardar employed his brother to make collections, and his brother collected not only the *Jamabandi* amounts, but in addition to those *Jamabandi* amounts an increased rate of rent, it was held that no obligation rested upon the plaintiff to prove gross negligence on the part of the lambardar. Vide also *Sees Ram* v. *Chait Ram*, (2 Agra 266.)

Liability of Lambardar for negligence or misconduct is personal :—From section 166 it may, on the first sight, appear that the heir or the legal representative of a lambardar would be liable for the

negligence or *misconduct* of the lambardar. But a close examination of the languages of section 166 and sub-section (2) sec. 164 would show that the heir or the legal representative of the lambardar would not be so liable. It is true that sec. 166 says that the word '*lambardar*' includes also the heirs, legal representatives, &c of such person ; but in sub-section (2) sec. 164 the word '*lambardar*' does not occur ; the word used being 'defendant.' This view is supported by authority also, for in *Gulab* v. *Fateh Chand* (W. N., 1886, p. 32) and in *Murad-un-nissa* v. *Ghulam Sajjad*, (W. N., 1897, p. 197) it was held that the liability of a lambardar to pay a co-sharer the profits which the lambardar did not collect through gross negligence is a personal liability and cannot be enforced against the lambardar's legal representatives.

Limitation, jurisdiction, suit, appeal, revision and review :— Suits under this section should be filed within 3 years from the date when the share of the profits becomes payable (4th Schedule, Group B, Serial No. 16) in the Court of the Assistant Collector in charge of the sub-division ; provided that if there is no Assistant Collector in Charge of the sub-division, such suits should be filed in the Court of the Collector [sec. 174 (*b*)]. Such suits would be disposed of by an Assistant Collector of the 1st Class (sec. 172) or by the Collector (sec. 173). An appeal from the decree of an Assistant Collector of the 1st Class or from that of a collector [sec. 180 (1)] will lie to the District Judge within thirty days from the date of the decree appealed against (Indian Limitation Act XV of 1877, second Schedule, second Division, Art. 152) under the provisions of sec. 177 ; provided that when the amount or value of the subject matter of the suit exeeds five thousand rupees, the appeal will lie to the High Court (sec. 177) within ninety days from the date of the decree appealed against (Indian Limitation Act XV of 1877, second Schedule, second division, Art. 156). A second appeal will lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of Chapter XLII of the Code of Civil Procedure (sec. 182) within ninety days from the date of the decree appealed against.

As to review *vide* secs. 183 and 184.

As to revision vide sec. 185.

Court-fee :—The Court fee payable on a plaint or a memorandum of appeal will be computed according to the amount claimed. (The Court Fees Act 7 of 1870, sec. 7 (1)].

Suit for profits against co-sharer.

165. (1) A co-sharer may sue another co-sharer for a settlement of accounts, and for his share of the profits of a mahal or of any part thereof.

(2) In any such suit the plaintiff may sue any number of co-sharers collectively, and in such case the decree shall specify the extent to which each of the defendants is affected thereby.

Sub-section (1) :—

The Select Committee in their report printed at page 77 of the N.-W. P. and O. Gazette dated 22nd June, 1901 say :—

"There is much confusion in the Courts at present between a claim for a settlement of accounts and a claim for a share of the profits, the present Rent Act providing different periods of limitation for these two suits. We see no practical advantage in retaining a separate suit for a settlement of accounts ; when a co-sharer sues for a settlement of account it is because he wants his share of the profits. We have accordingly drafted section 171 P. (now sec. 165) so as to show that one suit shall cover both claims, and we have confined the claim for a settlement of accounts to the case of a co-sharer suing another co-sharer, as it seems unnecessary in the case of a suit against a lambardar."

Co-sharer :— *Vide* under sec. 159.

Profits :— *Vide* under sec. 164, sub-section (1).

Non-receipt of profits for more than twelve years—adveese possession :— *Vide* under sec. 164 sub-section (1).

Interest on profits:— *Vide* under sec. 164, sub-section (1).

Conditions precedent to a suit under this section :— *Vide* under sec. 164, sub-section (1).

Suit on a balance sheet :—A suit for settlement of accounts against the collecting co-sharers, based on a balance sheet supplied by the defendants, cannot be defended successfully by their asserting that some of the items entered in it were for years previous to that for which they were entered, and therefore barred by time (*Baldeo* v. *Ranjit*, W. N., 1886, p. 144).

Jurisdiction—Civil and Revenue Courts :—A suit for settlement of accounts is not exempted from the jurisdiction of the Civil Court merely because some of the items which must be dealt with in that suit must happen to be profits arising from zamindari property (*Abid-unnissa* v. *Jamal Ali*, W. N., 1897, p. 205).

Intermeddler not liable for more than amount actually collected :—The lessee of two thirds of a five biswas zamindari share asserted and exercised a right of collecting rents in respect not only of the two-thirds but also of the remaining one-third. It appeared that he made these collections not as a matter of contract but as an intermeddler, and in defiance of the wishes of the holder of the one-third share.

Subsequently a suit was brought against him by a purchaser of the five biswas for recovery of rents so collected, the claim extending to rents which the defendant might have collected but neglected to collect, and which were consequently lost to the plaintiff. *Held* that the defendant not being under any obligation to collect the rents of the one-third share could not be made liable for any of such rents which he had not actually collected, and that as the collection expenses had exceeded the amount collected the suit must be dismissed (*Balwant Singh* v. *Gokran Prasad*, I. L. R., 9 All., 519; W. N., 1887, p. 135).

Suit by a pre-emptor :—A pre-emptor who had obtained a decree for pre-emption in respect of a share in a pure zamindari village could not successfully maintain a suit against the judgment-debtor co-sharer for the profits of the pre-empted share accruing between the date of the original decree and the date of his obtaining mutation of names, such profits having been collected by the lambardar but not paid over to the judgment-debtor; inasmuch as neither could the lambardar be considered as an agent of the co-sharer, whose possession of the profits was the possession of his principal, nor was there any obligation on the co-sharer to collect the profits and hold them to the use of the plaintiff (*Srikishen Lal* v. *Atma Ram*, I. L. R., 19 All., 261; W. N., 1897. p. 45).

Set-off :—*Vide* sec. 193 (*g*) and notes under sec. 164 (1). In a suit for settlement of accounts assets in one year should be allowed as set-off against deficit in another, and the result be subject to one decree (*Bahadur Singh* v. *Thakur Singh*, S. D. B. R., No. 5 of 1883).

Sub-section (2) :—A lambardar cannot sue for the body of share-holders without the authority of all the share-holders. At a suit for settlement of accounts between the body of share-holders in a village it is necessary that all be properly represented (*Udai Ram* v. *Ghulam Husain*, 2 L. R., H. C. S., 10). The lambardar of one patti of a mahal, who was a share-holder of both pattis of the mahal, sued the lambardar of the other patti and a shareholder of such patti for profits divisible among the share-holders of the mahal generally deducting the share of such profits belonging to the defendants. Held that, as the suit was one for settlement of accounts between the body of share-holders in which it was necessary that all of them should be properly represented, and as the plaintiff was suing without their authority, the suit was not maintainable (*Udai Ram* v. *Ghulam Husain*, I. L. R., 3 All., p. 186).

Limitation, jurisdiction, suit, appeal and review :—Suits under this section should be brought within three years from the date when the share of the profits becomes payable (4th Shedule, Group B, serial No. 17). As to other matters vide under sec. 164, sub-section (1).

Court-fee :—Vide under sec. 164, sub-section (1).

166. The words "lambardar," "co-sharer," "muafidar" "assignee of revenue," "taluqdar," and "superior proprietor" in this Chapter include also the heirs, legal representatives, executors, administrators, and assigns of such persons.

Words "lambadar," &c., include heirs, &c.

The Select Committee in their report printed at page 77 of the N.-W. P. and O. Gazette dated 22nd June, 1901, say :—

"In section 171 (now sec. 166) we have provided for suits by and against the heirs, legal representatives, &c. of lambardars, co-sharers, &c., so as to retain the jurisdiction of the Revenue Courts in these suits also. It is the nature of the suit and not the mere character held by the parties to the suit that should determine the Court in which it is to be heard."

The following rulings, though passed under the old law, will also be helpful :—

The lessee of a co-sharer is entitled to sue another co-sharer for share of profits (*Debi Saran Lal* v. *Debi Saran Upadhia*, S. D. B. R., No. 3 of 1883). The death of a defendant in a suit under sec. 93 (*h*) of Act XII of 1881 does not, with reference to sec. 112 (*a*) of Act XII of 1881 (corresponding to sec. 32 of the Code of Civil Procedure) oust the jurisdiction of the Revenue Court to decide such suit (*Ram Charan* v. *Bhola*, W. N., 1888, p. 63). A suit for profits brought by a co-sharer against the heirs of a deceased lambardar can be heard and determined only in a Court of Revenue (*Kifayatullah Khan* v. *Musammat Ali Begum*, S. D. B. R., No. 5 of 1893).

CHAPTER XII.

JURISDICTION OF COURTS.

Suits and Applications.

167. All suits and applications of the nature specified in the fourth schedule shall be heard and determined by the Revenue Courts; and except in the way of appeal, as hereinafter provided, no Court other than a Revenue Court shall take cognizance of any dispute or matter in respect of which any such suit or application might be brought or made.

Suits and applications cognizable by Revenue Courts only.

The members of the Select Committee in their report printed at page 78 of the N.-W. P. and O. Gazette, dated 22nd June, 1901, observe :—

"We have redrafted this section, somewhat on the lines of sections 93 and 95 of Act XII of 1881, as those sections appear to be more accurately expressed than section 172 of the Bill."

Tests of determining jurisdiction :—Under section 11 of the Code of Civil Procedure the jurisdiction is conferred upon Civil Courts of hearing and determining all Civil suits, except in those cases which are removed by some Act of the Legislature from the cognizance of Civil Courts. The section under note expressly takes all suits and applications of the nature specified in the fourth schedule out of the jurisdiction of Civil Courts. The proper tests for determining jurisdiction are (1) the parties between whom the litigation takes place and (2) the matter which is the subject of litigation. If the relation of landlord and tenant exists between the parties and the dispute relates to questions about tenancy, Revenue Courts will have jurisdiction to determine such cases. The jurisdiction of Civil Courts is ousted in cases between a landlord and a tenant. A Civil Court has no jurisdiction to entertain a suit in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs pray for a declaration that certain entries of the defendants in the Revenue Courts as occupancy tenants, and certain orders of the Revenue Courts maintaining those

entries, be set aside, and that the defendants are *shikmis* and not occupancy tenants, and that the land in question is the plaintiff's *Sir* land. Such a suit cannot be brought within the Civil Court's jurisdiction by dropping all the reliefs claimed except the last-mentioned declaration, that being merely of importance as incidental to the previous ones, and as a roundabout mode of obtaining a declaration that the defendants are not the plaintiff's occupancy tenants (*Mahesh Rai* v. *Chandar Rai*, I. L. R., 13 All., p. 17), see also *Sundar* v. *Khuman Singh*, (I. L. R., 1 All., p. 613). No suit will lie against a lambardar in a Civil Court for the wrongful dispossession of a tenant from a holding to which Act XII of 1881 applies. The plaintiffs, alleging themselves to be occupancy tenants and to have been wrongfully dispossessed by their landlords, who had made a lease of the land in suit, sued the landlords and the lessees of such landlords for recovery of possession and for damages. *Held* that such suit was exclusively cognizable by a Court of Revenue (*Tarapat Ojha* v. *Ram Ratan Kuar*, I. L. R., 15 All., 387; W. N., 1893, p. 164.) A Civil Court has no jurisdiction to entertain a suit, the decision of which necessarily involves the determination of the class of tenancy of one or other of the parties to it (*Sakina Bibi* v. *Swarath Rai*, W. N., 1893, p. 11). Suits for damages for the non-delivery of produce as rent during certain years are not maitainable in a Civil Court (*Ram Saran Singh* v. *Ablakh Rai*, W. N., 1892, p. 244). A suit to eject a tenant, holding on service tenure, on the allegation that he had ceased to perform the services due from him to the plaintiff is cognizable by the Court of Revenue (*Chajju* v. *Nannu*, W. N., 1893, p. 224). The plaintiffs sued in a Civil Court alleging that they were tenants at fixed rates of a cultivatory holding and that at the settlement, the settlement officer had entered the defendants in the village papers as tenants at fixed rates and the plaintiff merely as mortgagee, and they asked for a decree for maintenance of possession invalidating the proceeding of filling up the columns at the recent settlement. *Held* by the Full Bench (*Banerjee, J.* dubitante) that the suit so framed was not within the cognizance of a Civil Court (*Ajudhia Rai* v. *Parmeshwari Rai*, I. L. R., 18 All., 340; W. N., 1896, p. 95). If no rent is fixed, the land-holder cannot sue his tenant in a Civil Court for damages for the use and occupation of the land (*Debi Singh* v. *Muhammad Ismail Khan*, W. N., 1898, p. 38). A suit brought by a zamindar for partition amongst the tenants of a holding possessed jointly by tenants who were some of them occupancy tenants and others tenants-at-will would not lie in a Civil Court (*Nain Singh* v. *Abdul Hai*, W. N., p. 65). A zamindar ejected a tenant, and having done so, caused the value of the tenant's crops standing on the land to be assessed in the manner provided by section 42 of the N.-W. P.

Rent Act. The tenant assigned his right to get the assessed value of the crops from the zamindar to a third person. *Held*, that the assignee's proper remedy was by suit in a Court of Revenue (*Mathura Das* v. *Murli Dhar*, W. N., 1902, p. 150). An occupancy tenant died leaving two daughters, who had their names recorded as occupancy tenants of their deceased father's holding, but never obtained actual possession thereof. On the contrary, the zamindar put in his own tenant. One of the daughters of the late occupancy tenant, however, gave a lease of half of the holding, and the lessees ultimately sued the zamindar's tenant in a Civil Court for possession. Held that the suit was cognizable by Revenue Court only (*Ram Lall* v. *Chunni Lal*, W. N., 1904, p. 204). But see *Thakur Din* v. *Mannu Lal*, (W. N., 1897, p. 101). B, an occupancy tenant, mortgaged his occupancy holding by way of usufructuary mortgage to P. P sub-let the holding to D. B died; and thereupon the zamindar applied to the Settlement Officer to have her name recorded in respect of the occupancy holding on the ground that it had lapsed. The Settlement Officer caused D to be recorded as the sub-tenant of the zamindar. The zamindar then sued in the Revenue Court to eject D. D. in this suit pleaded that he was P's tenant and not the zamindars, and P. was accordingly made a party to the suit. In the result the Revenue Court ordered the ejectment of D. P. then sued in the Civil Court for a declaration that D. was his tenant and that he was entitled to remain in possession as mortgagee from the original occupancy tenant B. *Held* by Banerji, J., that D. and thereby P. and B., having been ejected by the Revenue Court, and the decision of that Court having become final, P. had no subsisting right to possession which could form the basis of suit. By Richards, J., that the suit brought by P. would not lie in a Civil Court; such a suit being contrary to the clear policy of the Legislature as exhibited in the N. W. P. Rent Act, 1881, and the Agra Tenancy Act, 1901. As neither the original tenant nor his heir could have any right to sue for recovery of possession of the occupancy holding in a Civil Court, the present plaintiff could not have any larger right than the person from whom his title was derived. (*Pahlwan Singh* v. *Satrupa Kunwar*, W. N., 1905, p. 178). But where such relation between the parties does not exist and the matter in dispute does not relate to the tenancy such suit is cognizable by the Civil Court. Where a party purchases crops belonging to a ryot at auction sale with notice, and assenting to the terms of sale that the crops were subject to landlord's claim for rent, and the landlord also being aware of the terms of sale allows the purchaser to remove the grain upon the understanding that the purchaser assented to, and became liable to pay the rent, a contract between the landlord and

the purchaser may be inferred whereby the purchaser became liable to pay the rent due. *Held* further that such suits are cognizable by the Civil Courts and any suit in the Revenue Court, (which Court had no jurisdiction) will not effect the landlord's right to enforce this obligation. (*Achul* v. *Ganga Pershad*; 2 Agra High Court Report, p 73). The defendant gave up a lease of certain property which he had taken from the plaintiff. On doing so he agreed in writing that whatever rent was due to the plaintiff should be paid in a certain time. Having failed to carry out the agreement, the plaintiff sued him in a Revenue Court on kabooliyut, for arrears of rent. *Held*, that the suit was not cognizable by a Revenue Court (*Mohunt Jai Ram Geer* v. *Sheo Sumpat Doobey* 5 N. W. P. High Court Report p. 84). Where in consequence of default in the payment of rent, an adjustment of accounts was entered into between landlord and tenant, and a balance found to be due from the tenants. *Held* that an action to recover such balance with interest was not a suit for arrears of rent but a suit for recovery of money on account (*Dobe Chand* v. *Goor Dyal*, 24 W. R., p. 218). For the same reasons it was held that a suit for a declaration that plaintiff is a tenant with right of occupancy and for possession against defendant who denies the tenancy, and has ejected the plaintiff as a trespasser will lie in the Civil Court (*Mahabal Singh* v. *Nandan Singh*, W. N., 1885 p. 49). S. and others, owners of a zamindari share, leased one-third of it to N. and S. N. and S. in turn sub-leased their rights to J. R. In his agreement with N. and S, J. R, covenanted to pay part of his rent to the original lessor of whom N. and S. held. Subsequently J. R., alleging that he had been ejected from the premises sub-leased to him by two persons M. and J., sued M. and J, for recovery of possession. *Held* that this was not a suit to which section 95 clauses (*m*) and (*n*) of Act XII of 1881 was applicable (*Man Rai* v. *Jai Ram Rai*, W. N., 1895, p. 77). A tenant of land to which Act XII of 1881 applied was duly ejected by process under that Act. As there were crops growing on the land at the time of the tenants' ejectment, and the zamindar's had not purchased such crops, the tenant re-entered for the purpose of tending and cutting the crops. When the crops were cut the tenant refused to vacate the land. *Held* that a suit for his ejectment as a trespasser was under the circumstances properly brought in a Civil Court (*Mirmohammad Ibrahim* v. *Dewan*, W. N., 1896, p. 156). A plaintiff brought his suit in a Civil Court alleging that he was entitled to the possession of certain land as a tenant at fixed rates, and that in consequence of the order of a Settlement Officer, he had been dispossessed by certain persons, alleged by him to be tresspassers without title, whom he made defendandts, together with the zamindar of the land in dispute. *Held*, that inasmuch as the plaintiff could under the

circumstances indicated in his plaint, have obtained no relief from a Court of Revenue, the Civil Court was competent to entertain the suit and to give the plaintiff a decree for possession as against the defendants other than the zamindar who were found to be trespassers notwithstanding that the Civil Court could not declare what was the nature of the plaintiffs' tenancy (*Dukhna Kunwar* v. *Unkar Pande*, W. N., 1897, p. 105 ; I. L. R., 19 All., p. 452). *Held* that the mere mortgagee of an occupancy tenure who is not in possession as a cultivating tenant, has no *locus standi* in the Rent Courts and cannot as "landlord" eject the actual cultivator or sue him for rent (*Kesho Tiwari* v. *Babu Lal Tiwari*, S. D. B. R. No. 2 of 1897). *Held* that a suit by a lessor against his lessee to recover rent which had accrued due in respect of agricultural land situated in Gawaliar State, but the defendant being a British subject resident in the district of Jhansi, was properly brought in a Civil Court in the district of Jhansi (*Bhujbal* v. *Nanheju*, W. N., 1897, p. 98). As to settlement of accounts see *Abidun-nissa* v. *Jamal Ali* (W. N. 1897, p. 205) ; as to suits for arrears of rent by usufructuary mortgagees against their mortgagors see *Altaf Ali* v. *Lalta Prasad* (W. N. 1897, p. 128) and *Bindeshri Rai* v. *Sadho Charan Rai* (W. N. 1904, p. 132). But see also *Husan Jahan Begum* v. *Kedar Nath*, (W. N. 1901, p. 109). Although a Civil Court cannot give a decree declaring or deciding the status of an agricultural tenant, yet where a plaintiff having no remedy in the Revenue Courts, sues on the allegation that he is a tenant entitled to possession, to eject a trespasser, it is competent to a Civil Court to grant a decree for possession on the ground that the plaintiff is a tenant, the class of his tenancy being left to Revenue Courts to determine (*Kaliani* v. *Dassue Pande*, W. N. 1898, p. 136). The plaintiff was the mortgagee from an occupancy tenant of some 34 odd bighas of land. When he attempted to take possession of the land under his mortgage, he was resisted by a third party who was in possession of about half of the land in question. The plaintiff accordingly sued in a Civil Court for possession "by virtue of the first defendants' right of occupancy and his (the plaintiff's) right as mortgagee," and also for a declaration that the second defendant had "nothing to do with the land." *Held* that the suit was properly brought in a Civil Court, and that the Civil Court was competent to grant the plaintiff a decree for possession, though it could not grant him the declaration asked for (*Padarath* v. *Ram Ghulam*, W. N., 1901, p. 162). Plaintiff, a minor, who was an occupancy tenant, sued to avoid a lease of the holding executed by his step-mother in favour of the Zamindar and for possession thereof. The Lower Court set aside the lease as being injurious to the minor but refused to decree possession, holding that the plaintiff should seek remedy

in the Revenue Court. *Held*, that the Lower Court was wrong in dismissing the claim for possession, the Civil Court and not the Revenue Court being competent to decree possession. The defendant's possession under the lease must be distinguished from his possession as Zemindar [*Sheogore Koeri* v. *Ram Agyan Rai*, A. L. J., Vol. II., p. 274 (notes and comments)].

Suits for demolition of houses or for removal of trees :—It has been decided that suits for demolition of houses built, or for removal of trees planted, by a tenant on his cultivatory holding are not cognizable by a Civil Court. (*Deodat Tiwari* v. *Gopi Misr* (W. N., 1882, p. 102) ; *Jai Kishen* v. *Ram Lal* (W. N., 1898, p. 135) ; *Kanhya Lal* v. *Huriyan* (W. N., 1901, p. 164) ; but see, *Prasanno Mai Debi* v. *Mansa* (W. N., 1886, p. 248).

Suits for specific performance :—Of a contract based on a Kabuliyat are cognizable in Civil Courts (*Lalji* v. *Nuran*, I. L. R., 5 All., p. 103).

Suits against surety :—A surety for arrears of rent can be sued in a Civil Court only (*Mahtab Kuari* v. *Debi Din*, W. N., 1886, p. 241).

Allegations in the plaint best guide for determining jurisdiction :—The jurisdiction of a Court of Justice as to a cause of action depends upon the nature of the claim put forward by the plaintiff, and the matter involved in it ; not on what defendant may assert by way of defence (*Chunder Koomar Mundal* v. *Bakur Ali Khan*, 9 W. R., 598). Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters governed by the statements contained in the plaint in the cause (*Jag Lal* v. *Har Narain Singh*, I. L. R., 10 All. p. 524). Where the plaintiffs come into Court alleging that they were ex-proprietary tenants having occupancy rights, and had held possession until two months previous to the suit, and asking for a decree for possession and for declaration of their title ; *held*, that such a suit was not within the congnizance of the Civil Court (*Shakur Khan* v. *Gumani Lal*, W. N., 1890, p. 177). To give jurisdiction to Revenue Courts it is not necessary that the position between the parties of landlord and tenant be admitted. When one party claims to be declared occupancy tenant of a holding, this allegation in the plaint is sufficient to give jurisdiction to Revenue Courts and its decision is final (see *Subarni* v. *Bhagwan Khan*, W. N., 1897, p. 1). But see *Niadar* v. *Baru Mal*, (W. N., 1901, p. 204). The reason which a landholder may have for desiring to eject a tenant of agricultural land has nothing to do with the procedure to be adopted for the tenant's ejectment. Where the procedure laid down in sec. 36 *et seq.*,

of the North-Western Provinces Rent Act, 1881, is available, the landholder must adopt that procedure and the mere fact that the landholder's alleged cause of action is the denial by the tenant of the landholder's title will not give the landholder a right to sue for ejectment in a Civil Court (*Ram Sukh* v. *Gokul Chand*, W. N. 1898, p. 213).

Proof of admission of tenancy:—The service of a notice of ejectment under sec. 36 of Act XII of 1881 is, as between the person who causes such notice to be served and the person on whom it is served, a conclusive admission by the former of the existence between them of the relationship of landlord and tenant (*Baldeo Singh* v. *Imdad Ali*, W. N., 1893, p. 93; *Deo Narain Rai* v. *Sheo Charan Rai*, W. N., 1893, p. 166).

Whether the right of a suit or the liability to be sued in a Rent Court passes to heirs, legal representatives etc:—This was a very unsettled point under the old law. The present Act has settled the point in regard to suits, under Chapter XI, in respect of arrears of revenue, profits &c by enacting section 166. But the difficulty as to other suits has been left untouched by the present Act. The right of suit and the liability to be sued were considered to be personal only and therefore, when the heirs of the lessor of a certain village sued the heirs of the original lessee for arrears of rent due by him on the lease in the Revenue Court, it was held that the suit was not cognizable in the Revenue Courts, but in the Civil Courts (*Tirbeni Sahai* v. *Sheikh Husain*, W. N., 1883, p. 59). This continued to be the current of decisions till it was changed by the ruling contained in *Lekhraj Singh* v. *Rai Singh* (W. N. 1892, p. 143; I. L. R., 14 All., 381) where the Full Bench after reviewing a number of cases held that an occupancy tenant in possession who has accepted the occupancy holding is liable to be sued for arrears of rent not barred by limitation which accrued in the lifetime of the person from whom the right of occupancy has devolved upon him. It was further held that the suit above referred to is exclusively cognizable by a Court of Revenue. So when a zamindar on the death of an occupancy tenant refused to admit his heir to possession of the occupancy holding and took possession of it, it was held that the proper remedy of the heir was by application under sec. 95 of Act XII of 1881 and not by a suit in a Civil Court (*Bani Bai* v. *Parbati*, W. N., 1893, p. 196). The heirs of an occupancy tenant are liable for rent until they relinquish the holding in the manner sanctioned by law, whether they occupy the holding or not (*Peary Mohun Mookerjee* v. *Kumaris Chunder Sirkar*, I. L. R., 19 Calc., 790). On the principles laid down in the High Court's ruling in *Lekhraj* v. *Rai Singh*, a suit for profits under sec. 93 (*h*) of the Rent Act brought by a recorded co-sharer against the heirs of a deceased lambardar can be heard and determined only in a Court of Revenue (*Kifayat Ullah Khan* v. *Musam-*

mat Ali Begum, S. D. B. R., No. 5 of 1893). Mere assignees of rent are not entitled to sue in the courts of Revenue as landholders, and if a person other than the recorded proprietor claims to sue as a landholder he must show that he is mortgagee in possession or lessee or agent (*Rustam Khan* v. *Lal Bishnath Singh*, S. D. B. R., No. 3 of 1897).

Declaratory Decrees:—It is true that the Civil courts alone have jurisdiction to grant declaratory decrees, but it is equally true that it is not every action for a declaration of right, title or interest, that can be taken cognizance of by the Civil Courts. By the special rule contained in the section under note, it is provided that the Civil courts shall not take cognizance of all suits and applications of the nature specified in the fourth schedule. In that schedule are contained suits for declaration as to any of the matters specified in sec. 95. Therefore such suits will be within the cognizance of Revenue Courts only. So where the plaintiff being admittedley the tenant of the land sued for a declaration that the entry in the Settlement papers showing him as occupancy tenant is wrong, it was held that the suit was cognizable by Revenue courts (*Sadik Ali* v. *Liakat Ali*, W. N. 1887. p. 214)—a suit for "invalidating the proceeding of filling up the columns at the recent settlement" was held to lie in a Revenue court (*Ajudhia Rai*, v. *Parmeshar Rai*, W. N. 1896. p. 95; I. L. R., 18 All, p. 340).

Res Judicata:—

Decisions of a Revenue Court barring a subsequent suit in Civil Court:—The main principle upon which the doctrine of *res-judicata* rests is that the Court whose decision is pleaded as barring a suit must be a court of competent jurisdiction; that is to say it must be competent to try the question. It follows, therefore, that the decisions of Revenue courts on questions of title cannot operate as *res-judicata*. But there is an exception to this rule which is contained in section 199 *infra*. The effect of this section is to give to Revenue Court jurisdiction to try questions of title and to make its decisions in such cases final. A suit for ejectment on the ground that defendant has entered plaintiff's land wrongfully and forcibly having been dismissed by the court, which found that the defendant was not a trespasser but a tenant, plaintiff now sues again on the allegation that defendant is now a trespasser though lately a tenant: *Held* that the suit, though not prohibited by Act VIII. of 1859, s. 2, must nevertheless be dismissed, as plaintiff had not terminated the tenancy by giving defendant reasonable notice to quit. (*Heera Rawut* v. *Racha Rawut*; 22 W.R. p. 115). A Revenue Court decided that S was entitled to the occupancy of the land by inheritance After this the landholder sued S in the Civil Court for the possession of the land. *Held* that the question of S's title to the occupancy of land

was with referrnce to the decision of the Revenue Court, *res judicala* and could not again be raised in the Civil Court (*Shimbhu Narain Singh* v. *Bachcha*, I. L. R. 2 All. p. 230). The defendants served a notice of ejectment under section 36 of Act. XII. of 1881 on the plaintiffs, alleging the plaintiffs to be their sub-tenants and themselves to be tenants with a right of occupancy. The plaintiffs objected that they, and not the defendants were the tenants-in-chief of the land in question. This objection was decided under, sec. 39 of the said Act, by a Court of revenue adversely to the plaintiffs. The plaintiffs thereupon sued in a Civil Court for a declararion that they were tenants with a right of occupancy and for maintenance of possession. *Held*, that inasmuch as sec. 96 (*h*) of Act XII of 1881 gave to decision of a Court of Revenue under Sec. 39 the effect of a judgement of a Civil Court, the hearing of the plaintiff's present suit in a Civil Court was barred (*Sheo Narain Rai* v. *Parmeshar Rai*, W. N., 1896, p. 59 ; I. L. R., 18 All. p. 270).

Decisions of a Revenue court barring a subsequent suit in a Revenue Court :—The plaintiff brought a suit in the Revenue Court against the defendants to recover rent on certain land. The defence was that the defendants were formerly share holders, but by an arrangement they were allowed to retain their lands as *sir*, without any liability to pay rent in lieu of the profits of their Zemindari share. It appeared that in the previous year the plaintiff had brought a suit against them for rent on the same land and they made the same defence. The point was decided against them and they were made liable for rent. In this second suit the question was whether the dispute can be re-opened. It was held that the question whether the defendants were tenants of plaintiff or held the land as *sir* under an agreement in lieu of their share, and without liability to pay rent, was a matter which the Revenue Court was competent to try and decide for the purpose of adjudicating on the claim for rent which had been brought in that Court, and the Revenue Court cannot, in a subsequent year, try the same issue again (*Fatima Bibi* v. *Sarju Singh* W. N. 1885 p. 159). The plaintiffs claimed before the settlement Deputy Collector to be recorded as tenants-in-chief with right of occupancy in certain land. Prior to making this claim in the settlement court they filed an application for determination of tenure in the court of the Assistant Collector in charge of the pargana, and were declared to be tenants with right of occupancy. An application for review was presented to the Assistant Collector, but before orders had been passed on it the Settlement Dy : Collector declared the plaintiffs to be sub-tenants cultivating *sir* of the Zamindars. This order was not appealed, but the Zamindars appealed against the orders of the Assistant Collector. The Com-

missioner who took up both cases together reversed the order of the Assistant Collector and upheld that of the Settlement Deputy Collector. *Held*, that a dispute respecting the tenure of a tenant duly decided by the rent courts cannnot be re-opened in another Court of co-ordinate jurisdiction (*Mata Din* v. *Sahib Rai*, S. D. B. R. No. 14 of 1885). But new statement of an alleged rate of rent in a plaint in a rent suit in which an exparte decree has been obtained, is not a statement as to which it must be held that an issue within the meaning of section 13 of the Code of Civil Procedure was raised between the parties so that the defendant is concluded upon it by such decree. Neither a recital in the decree of the rate of rent alleged by the plaintiff, nor a declaration in it as to the rate of rent which the Court considers to have been proved, would operate in such a case so as to make that matter a *res-judicata*, assuming that no such declaration were asked for in the plaint as part of the substantive relief claimed, the defendant having a proper opportunity of meeting the case (*Madhusudan Shaha Mundal* v. *Brae*, I. L. R. 16 Calc. p. 300).

Decisions of a Revenue Court no bar to a subsequent Civil suit :—The plaintiffs in this suit, landholders, had caused a notice of ejectment to be served on the defendants, their tenants, under a lease, on the ground that the tenancy had expired. The defendants, applied to the Revenue Court, under Sec. 39 of Act XVIII of 1873, contesting their liablity to be ejected on the ground that the lease was a perpetual lease. The Revenue Court held, with reference to the word "*istimrari*" contained in the lease, that the lease was perpetual, and the defendants were not liable to be ejected. The plaintiffs thereupon sued in the Civil Court for the cancelment of the word "*istimrari*" in the lease, on the ground that it had been inserted fraudulently. *Held* on the appeal from the decree of the Lower Appellate Court dismissing the suit as barred by the decision of the Revenue Court, that it was not so barred, the matter in dispute being peculiarly within the Jurisdiction of the Civil Court, and not one which a Revenue Court was competent finally to determine on an application under Sec. 39 of Act XVIII of 1873 (*Husain Shah* v. *Gopal Rai*, I. L. R. 3 All. p. 521); and *Ram Prasad* v. *Ram Shankar* (W. N. 1882 p. 58). The decision of a Revenue Court in a suit by a lambardar against a tenant under Sec. 93 (*h*) of Act XVIII of 1873 for the ejectment of the tenant on the ground of misconduct in constructing a well, that the tenant could not be ejected from his holding without compensation being given to him for his outlay in constructing it, is not a determination of the landholder's right to demolish the well as having been constructed by a person not having a right to construct it and consequently such a decision is not a bar to a suit by the land-

holder in the Civil Court for the demolition of the well as having been so constructed (*Raj Bahadur* v. *Birmha Singh*, I. L. R., 3 All., p. 85). The appellants claiming to be the proprietors of certain land and treating the respondents as tenants of the land, applied to the Revenue Court for their ejectment. The Respondents contended that they were not the appellant's tenants. This contention was allowed, and the application was dismissed. Thereupon the appellants brought a suit in the Civil Court to eject the Respondents. Held that the suit was cognizable (*Muhammed Zaki* v. *Hasrat Khan*; W. N. 1882 p. 61). A decision of a Revenue Court disallowing an application to eject a tenant because he has built on his land, does not, under Sec. 13 of the Civil Procedure Code, bar a suit in the Civil Court to have the building demolished (*Amrit Lal* v. *Ballir*, I. L. R. 6 All., p. 68). An entry in a settlement record which is based solely on the fact of possession cannot operate as *res-judicata* on a question of title subsequently raised in a Civil suit (*Kaliani* v. *Dassu Pande*, W. N. 1898, p. 136). The decision of a Court of Revenue allowing mutation of names in the defendant's favour could not operate as *res-judicata* in respect of a suit brought by the plaintiff in a Civil Court for ejectment of the defendant as a tress-passer (*Baru Mal* v. *Niadar*, W. N. 1901, p. 127). *Held* that when an Assistant Collector hears a suit for profit, or for rent, or any other suit which under the Rent Act he is competent to hear, although it may be necessary for him for the purpose of that suit to decide every question, whether of title or otherwise, which may be raised before him, his decision of such questions cannot operate as *res-judicata* in respect of any suit which may afterwards be brought in a Civil Court in which the proprietary title to the land out of which such profits or rents may arise is in issue (*Asraf-un-nissa* v. *Ali Ahmad*, W. N. 1904, p. 141 ; I. L. R., 26 All., p. 631). The fact that a question of title has been decided by a Court of Revenue in the course of a suit exclusively triable by such a Court, although such decision was necessary to the determination of that suit, will not preclude the subsequent trial thereof by a Civil court (*Inayat Ali Khan* v. *Murad Ali Khan*, W. N. 1905, p. 103). Where in proceedings taken under section 36, Rent Act (XII of 1881) the Revenue court did not decide whether the person sought to be ejected was a tenant or a mortgagee but left the question of title open. *Held* that the latter could maintain in the Civil Court a suit for declaration that he was a motgagee from the actual zamindar and was entitled to remain in possession as such. (*Ram Saran* v. *Musammat Patte*, A. L. J. vol II. p. 127 (notes and comments)].

168. Subject to the provisions of this Act, the provisions of the Indian Limitation Act, 1877, with the exception of sections 7, 8, 9, 19, 20, and 21 thereof, shall apply to all suits and other proceedings under this Act.

Application of Limitation Act.

This section is altogether new. It embodies the principle of the ruling of the Allahabad High Court where it was held that the general provisions of the Indian Limitation Act, 1877 are applicable to suits and proceedings under special or local laws except in so far as they affect or alter the period of limitation prescribed by those laws : unless the special or local law is a complete code by itself (*Joti Sarup* v. *Ram Chandar Singh*, W. N., 1902, p. 34). It makes the provisions of the Indian Limitation Act applicable to all suits and proceedings under this Act with the exception of the following sections of the said Act :—

"Sec. 7 :—If a person entitled to institute a suit or make an application be at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability he may institute the suit or make the application within the same period after both disabilities have ceased as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disabilty, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby the period within which any suit must be instituted or application made.

"Sec 8 :—When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all ; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

"Sec. 9 :—When once time has begun to run, no subsequent disability or inability to sue stops it : Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

"Sec. 19 :—If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability or righ has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives tittle or liability, a new period of limitation according to the nature of the original liability shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated oral evidence may be given of the time when it was signed, but oral evidence of its contents shall not be received.

Explanation 1 :—For the purposes of this section an acknowledgement may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment, has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2 :—In this section "signed" means signed either personally or by an agent duly authorized in this behalf.

"Sec. 20 :—When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made. Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Where mortgaged land is in the possession of the mortgagee, the

receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

"Sec. 21 :—Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by or by the agent of, any other, or others of them."

In the original Bill only secs. 7, 8 and 9 were made inapplicable but the other three secs. were added afterwards with the following remarks published in the report of the Select Commitee printed at page 78 of the N. W. P. and O. Gazette dated 22d June, 1901 :—

"We have at the same time added secs. 19, 20 and 21 of the Limitation Act as excepted from applying to suits in the Revenue courts, as it would be an innovation, and, we think, an undesirable one, to introduce their provisions in such sases."

Sec. 5 of the Indian Limitation Act, 1877, applies to a suit under sec. 43 (a) of the North-Western Provinces Rent Act, 1881, (*Beni Prasad Kuari* v. *Dharaka Rai*, 23 All., p. 277 ; W. N., 1901, p. 72 *Kali Charan Rai* v. *Padarath Rai*, S. D. B. R., No. 6 of 1885 also *Hussein Ali* v. *Douzell* 5 Calc. p. 906 ; *Musamat Ram Kunwar* v. *Musamat Imrat Kunwar*, S. D. B. R. No. 6 of 1893. The ruling reported in W. N., 1898. p. 151 has been rendered ineffectual by the express provisions of this section inasmuch as sec. 5 of the Indian Limitation Act has been made applicable to suits and other proceedings under this Act. In *Joits Sarup* v. *Ram Chandar Singh* (W. N., 1902, p. 34) it was held that the plaintiff was entitled to pray in aid an acknowledgement made by the lambardar in a suit brought by other assignees from the same assignor for the profits of those years against the lambardar. But this is not the law now, because sec. 19 of the Limitation Act which refers to acknowledgment has expressly been made inapplicable by this section.

Due diligence :—D sued C for rent of agricultural land, alleging C to be his occupancy tenant ; C pleaded that he was not the tenant of D, but of B. and others. B. and others were accordingly added as defendants to the suit. The suit was decided by the Rent Court of first instance against B. and others. C, the tenant, appealed to the Collector, but when C's appeal was dismissed, appealed to the District Judge. The District Judge on the 28th March, 1895, dismissed this appeal. B. and others then brought a suit in the Civil Court for declaration of their title. This suit was filed on the 3rd August 1898. *Held* that the suit was barred by limitation. Whatever might have been the case with C, B and others, though perhaps acting in good faith, did not prosecute the former proceedings in the Court of Revenue with due diligence within

the meaning of sec. 14 of the Indian Limitation Act, 1877 (*Dasrath Rai* v. *Bhirgu Rai*, W. N. 1901, p. 123).

Limitation in cases under Act.

169. The suits and other proceedings specified in the fourth schedule shall be instituted within the time prescribed in that schedule for them respectively.

This section is altogether new.

Shall be instituted within the time prescribed :—

This means that no extension of time will be allowed. It has been held that all limitation provisions must be strictly construed (*Mauzal Lal* v. *Kundhai Lal.* W. N., 1866, 233 ; *Jag Lal* v. *Hara Narain Singh* 10 All 524 ; *Ramjiawan Mal* v. *Chand Mal*, 10 All., 587) ; the court has no discretion to extend the time except as provided by law (*Dewan Ali* v. *Mansoor Ali*, 11 W. R., 259).

Court-fees payable on suits and applications.

170. For the purposes of the Court-fees Act, 1870, the amount of fee payable in the suits and other proceedings specified in the fourth schedule shall be computed as prescribed in the sixth column thereof.

This section is altogether new.

Grades of Courts.

Powers of Assistant Collector, 2nd class.

171. An Assistant Collector of the 2nd class shall have power to dispose of all suits included in Group (A) in which the value of the subject-matter does not exceed one hundred rupees and all applications included in Group (D) of the fourth schedule, except an application under section 94.

Value of the subject matter does not exceed one hundred rupees :—The Select Committee in their report printed at page 78 of the N. W. P. and O. Gazette, dated 22nd June, 1901, have observed as follows :—

"We have limited the jurisdiction of Assistant Collectors of the 2nd class to suits not exceeding rupees hundred in value. Some of the suits in

Group (A) may involve claims to the amount of thousands of rupees, and the present practice is that Assistant Collectors of the 2nd class do not try suits of more than rupees fifty or hundred in value. Moreover, there would be an administrative inconvenience in the time of the Tahsildar being taken up in the disposal of all these suits. The limit of rupees hundred is a convenient one, because appeals from Assistant Collectors of the 2nd class go to the Collector, while appeals from Assistant Collectors of the first class in suits exceeding rupees hundred in value go to the Civil Court."

Except an application under sec. 94 :—Sec. 94 deals with disputes as to the right of a tenant to make improvements and as to whether a particular act is an improvement or not. It appears that applications under this section also are taken out of the jurisdiction of Assistant Collectors of second class in order to save their time for executive functions.

Dispose of :—a distinction is to be drawn between the provisions of this section and secs. 172 and 173 and those of section 174. The former sections deal with the *powers* of courts of different grades. In other words they show us what courts are empowered or have jurisdiction to *try* particular suits. While section 174 tells us the courts where particular suits and proceedings are to be *filed* irrespective of the fact whether they are empowered to dispose of the same or not.

"All applications included in Group (D) of the Fourth Schedule :—This would include applications for review of judgment and applications for revision ; but taking into consideration the provisions of secs. 183, 184 and 185 it appears that this is not the case. Sec. 183 expressly provides "that the Board may review and may rescind, alter or confirm any decree or order made by itself or by a single member." Sec. 184 provides for "review by other courts." Sec. 185 expressly restricts the power of revision to the Board. In view of these express provisions it is clear that applications for review and revision were not intended to be included in this section

Powers of Assistant Collector, 1st class.

172. An Assistant Collector of the 1st class shall have power to dispose of all suits and applications specified in the fourth schedule ;

Provided that no Assistant Collector shall have power to try suits under sections 40, 42, 43 and 48, unless he is empowered by the Local Government in that behalf.

The first part of this section corresponds to sec. 98 of Act XII of 1881.

Proviso :—This proviso corresponds to sec. 100 of Act XII of 1881. The members of the Select Committee in their report printed at page 78 of the N. W. P. & O. Gazette, dated 22nd June, 1901, remark:—"Under the present Act (sec 100) no Assistant Collector, not specially empowered by the Local Government, has power to try cases for enhancement and abatement of rent etc. As these are difficult cases requiring special qualifications in the officers trying them, it seems desirable to retain the provision, and we have accordingly embodied it in a proviso to this section.' Sections 40, 42, 43 and 48 relate to enhancement and abatement of rent.

173. A Collector shall have all the powers conferred on an Assistant Collector of the 1st class and on a Collector by this Act.

Powers of Collector.

This section corresponds to secs. 98, 99 and 100 of Act XII of 1881.

174. Notwithstanding anything contained in section 15 of the Code of Civil Procedure—

Courts in which proceedings to be instituted.

(*a*) all suits included in Group (A), in which the value of the subject-matter does not exceed one hundred rupees, and all applications included in Group (D) of the fourth schedule shall, except as provided in section 59 and section 94, be filed in the Court of the Tahsíldàr ;

(*b*) all suits included in Group (A), in which the value of the subject-matter exceeds one hundred rupees, and all suits included in Group (B) and Group (C) of the fourth schedule, and all applications under section 94, shall be filed in the Court of the Assistant Collector in charge of the subdivision :

Provided that if there is no Assistant Collector in charge of the sub-division, all such suits shall be filed in the Court of the Collector.

This section is altogether new. Vide notes under sec. 171 "dispose of."

Appellate Jurisdiction of Courts.

175. No appeal shall lie from any decree or order passed by any Court under this Act except as hereinafter provided.

Appeal to be as allowed by Act.

This section corresponds to secs. 182, 185, and 197 of Act XII of 1881

'Decree' or 'order':—In order to decide what are 'orders' and what are 'decrees' under the North-Western Provinces Tenancy Act, 1901, the definitions contained in the Civil Procedure Code, section 2, must be applied (*Dhani Ram* v. *Bhola Singh*, W. N. 1904, p. 152. Rev. L. J. Vol I. p. 110).

Jurisdiction of High Court:—The provisions of this section have no effect upon the jurisdiction conferred by section 10 of the Letters Patent of the Court (*Zamin Ali Khan* v. *Genda*, W. N. 1904, p. 48 ; Rev. L. J. Vol. I. p. 107 ; A. L. J. Vol. I, p. 105).

Right of appeal—By what law governed:—where the Collector's decision was passed under Act XII of 1881, and the appeal was filed after the coming into force of Act II of 1901, held that the latter Act governed the appeal (*Zamin Ali Khan* v. *Genda Singh*, W. N. 1904, p 48 ; A. L. J. Vol I. p. 105 ; Rev. L. J. Vol. I. p. 107).

Appeals from Assistant Collectors of the 2nd class

176. An appeal shall lie to the Collector from the decree or order of an Assistant Collector of the 2nd class in the following cases :—

Appeals from decrees or orders of Assistant Collectors 2nd class.

(*a*) from a decree in any of the suits included in Group (A) of the fourth schedule ;

(*b*) from an order on any of the applications included in Group (D) of the fourth schedule ;

(*c*) from an order relating to the trial of a suit or application.

This section corresponds to secs. 183 and 192 of Act XII of 1881.

'Decree' or 'order':—see notes under sec. 175 and also under sec. 177.

Appeals from Assistant Collectors of the 1st class.

Appeals to District Judge and High Court

177. An appeal shall lie to the District Judge from the decree of an Assistant Collector of the 1st class,

in any of the suits included in Group (A) and Group (B) of the fourth schedule in which—

(*a*) the amount or value of the subject-matter exceeds one hundered rupees; or

(*b*) the rent annually payable by a tenant has been a matter in issue in the Court of first instance, and is a matter in issue in the appeal; or

(*c*) the amount of rent payable separately to one or more of a number of co-sharers has been in issue in the Court of first instance, and is a matter in issue in the appeal;

and in any suit under sections 159, 160, 161, 162, 164, and 165, in which—

(*d*) the amount of the revenue annually payable has been a matter in issue in the Court of first instance, and is a matter in issue in the appeal; and in all suits in which—

(*e*) a question of proprietary title has been in issue in the Court of first instance, and is a matter in issue in the appeal; or

(*f*) a question of jurisdiction has been decided:

Provided that when the amount or value of the subject-matter of the suit exceeds five thousand rupees, the appeal shall lie to the High Court.

This section corresponds to sec. 189 of Act XII of 1881.

Its provisions for appeals to the District Judge from the decree of an Assistant Collector of the 1st class are as follows :—

(1) From decrees in suits included in Group A and Group B of the Fourth Schedule when any one of the conditions mentioned in clauses (*a*) (*b*) and (*c*) exists.

(2) From decrees in suits under secs. 159, 160, 161, 162, 164 and 165 when the condition specified in clause (*d*) exists.

(3) From decrees in all suits when the conditions specified in clauses (*e*) and (*f*) are present. (*Mewa Ram* v. *Kishen Bihari*, S. D. B. R. No. 10 of 1903). It is to be noted that the conditions specified in clauses (*e*) and (*f*) obviously apply also to the cases (1) and (2).

District Judge :—A Subordinate Judge in temporary charge, under sec. 10 of Act XII of 1887, of the office of the District Judge, had power to take up and decide a Revenue Court appeal which was pending on the file of the District Judge (*Rahmat Ali Khan* v. *Abdullah*, W. N, 1901, p. 129 ; 23 All., p. 455) but the District Judge has no authority to transfer such appeals from his own file to that of the Subordinate Judge and cannot give him jurisdiction (*Ram Prasad* v. *Rai Kishen* W. N., 1883, p. 185).

'Decree' :—secs. 175 and 176 provide for appeals from the decree or order of an Assistant Collector of the 2nd class ; but in this section the word order is omitted, and no doubt intentionally. Therefore under this section an appeal lies only from decrees and from those orders which by the force of sec. 2 of the Code of Civil Procedure have the force of a decree. An order made by an Assistant Collector of the first class in execution of a decree for over Rs. 100 in a suit falling under groups A and B of schedule IV. N. W. P. Tenancy Act, is a decree within the meaning of sec. 177 of that Act and an appeal will lie therefore to the District Judge (*Kharag Sing* v. *Pola Ram*, A.L.J. Vol. I. p. 305 ; W. N. 1904, p. 156 ; I. L. R., 27 All., p 31 ; Rev. L. J. Vol I p, 110) ; but the correctness of this ruling was doubted in *Maharani of Dumraon* v. *Buddho Kunwari* (W. N. 1905, p. 213) where their Lordships remarked as follows :—

"In that case it was held by our brothers Blair and Banerjie that an appeal does lie to the District Judge from an order of the Assistant Collector of the First class if such order by the force of sec. 2 of the Code of Civil Procedure amounts to a decree. We have serious doubts as to the correctness of this decision" ; where a Collector set aside a sale under circumstances which constituted his order, not so much an order under sec. 312 of the Code of Civil Procedure, as an order under section 244 of the Code, it was held that an appeal therefore lay to the

District Judge (*Muhammad Yusuf Ali Khan* v. *Hasan Fatima*, W. N. 1905, p. 35); but an order returning a plaint for presentation to the proper court is not a "decree" within the meaning of the sections providing for appeals in the N. W. P. Tenancy Act (*Dhani Ram* v. *Bhola Singh*, A. L. J. R., Vol. I. p. 308, W. N., 1904, p. 152; Rev. L. J., Vol. 1, p. 110); there is no appeal from an order of remand passed under sec. 562 of the Code of Civil Procedure in a suit or proceeding under the Agra Tenancy Act, 1901 (*Vilayet Husen* v. *Maharaja Mahendra Nandy*, W. N., 1905, p. 198).

Clause (*a*) :—**'Amount or value of the subject matter'** :—Where a plaintiff in a suit under sec. 93 of the N. W. P. Rent Act valued his suit at Rs. 46-3, which valuation was not objected to either by the defendant or the Court, and subsequently being defeated in his suit preferred an appeal which he valued at a very much greater amount. Held that he must be bound by the valuation put upon his suit and could not by alleging a greatly enhanced value obtain an appeal which would not have lain on the valuation stated in the plaint (*Radha Prasad Singh* v. *Pattan Ojha*, W. N., 1893, p. 148) see also *Lachman Das* v. *Daulat Singh*, W. N., 1881, p. 35; *Sunder Pandey* v. *Budhu Chaubey*, W. N., 1881, p. 36; *Raja Singh* v. *Sulka*, W. N. 1884, p. 137.

The amount or value of the subject matter of the suit must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the court, unless it appears that, either purposely or through gross negligence, the true value of the suit has been altogether misrepresented in the plaint (*Mahabir Singh* v. *Behari Lal*, 13 All., p. 320; W. N. 1891, p. 107; *Ram Charan* v. *Mirza Rahmutulla Beg*; L. R., 3 R. R. S., p. 39).

Clause (*b*) :—**Rent annually payable** :—The criterion to be used in deciding whether an appeal lies under sec. 189 of Act XII of 1881 is whether the decision would merely affect a particular year, or whether it would supply a plea of *res-judicata* if not appealed against for all succeeding years in which the landlord and tenant stood in the same relation as when the suit was brought (*Mohib Ali Khan* v. *F. S. Martin*, 16 All., p. 51; W. N. 1893, p. 204); the words "rent payable by the tenant" in sec. 189 of the North Western Provinces Rent Act (XII of 1881) (as amended by Act XIV of 1886) mean the rate of rent payable by the tenant and not merely the actual amount of money which is due at any given time by the tenant to his landlord as rent (*Radha Prasad Singh* v. *Pergash Rai*, W. N. 1891, p. 83; 13 All., 193; *Radha Pershad Singh* v. *Mathura Chaube*, W. N. 1891, p. 219; 14 All., 50); where certain defendants being sued by the zamindars for the rent of land held by them, pleaded in effect that whatever the rent of the land in suit might be, they were

entitled to retain it under an agreement between them and the predecessor in title. *Held* that the case was not one in which an appeal would lie to the District Judge under sec. 189, inasmuch as the rent payable by the tenant was not in issue in the suit (*Deo Charan Singh* v. *Beni Pattak*, 21 All. p. 247 ; W. N., 1899, p. 47) ; the words in section 189 of North Western Provinces Rent Act, 1881, "in which the rent payable by the tenant has been a matter in issue....." include cases in which the question whether any rent at all is payable by the tenant, has been a matter in issue, and has been determined (*Beni Prasad Kuari* v. *Batulan Bibi*, 23 All., p. 283 ; W. N. 1901, p. 75). The term rent as used in section 189 of Act XII of 1881, cannot be extended so as to include revenue (*Tilkdhari Rai* v. *Soghra Bibi*, 18 All. p 302).

'Is a matter in issue in the appeal' :—It is not sufficient that the point has been raised in the Court of first instance only ; the point must also be in dispute in the Court of appeal otherwise no appeal will lie under this section.

Old Act :—The old Act provided an appeal where rent payable by the tenant has been a matter in issue "and has been determined." The latter four words have been omitted. The members of the Select Committe say :—"In clauses (*b*), (*c*) and (*d*) [now (*e*)] we have omitted the words "and has been determined" as we think there should be an appeal when the Court of first instance ought to have determined such a question, but has improperly omitted to do so" (N. W. P. and O. Gazette, dated 22nd June, 1901, p. 79).

Clause (*c*) :—This clause embodies the principle laid down in (*Narain Mahton* v. *Manafi Pattuck*, 17 Cal. 489.

'Is a matter in issue in the appeal' :—See notes under clause (*b*).

Old Act :—See notes under clause (*b*).

Clause *d*) :—Section 159 relates to suits for arrears of revenue, etc. by lambardar, and sec. 164 relates to suits for profits against a lambardar.

Sec. 160 deals with suits for arrears of revenue by co-sharer and sec. 165 deals with suits for profits against a co-sharer.

Sec. 161 deals with suits for arrears of revenue by a muafidar while sec. 162 deals with those by taluqdars.

Is a matter in issue in the appeal:—See notes under clause (*b*).

Clause (*e*) :—The question of proprietary title referred to in this clause must be one between the parties to the suit. If to determine a case between the plaintiff and defendant the proprietary title of a third person be in question that would not be proprietary title within the meaning of this section. The following were held to be *questions of proprietary title* :—

Where the defendant pleaded in answer to plaintiff's suit for arrears of rent that defendant no longer held as tenant, but as sub-proprietor under a settlement made direct with defendant by the settlement-officer *Held* that under sec. 189 of Act XVIII of 1873 the suit involved a question of proprietary title, and that an appeal lay to the Judge of the District, although the amount in suit was less than Rs. 100 (*Besheshar Singh* v *Sugundhi*, I. L. R. 1 All., 366); so also it was held that a decree dismissing a suit under sec. 93 (*h*) of the N. W. P. Rent Act on the grounds that the plaintiffs were not co-sharers of the defendant and that the defendant was not a co-sharer but an occupancy tenant, had determined the proprietary title to land within the meaning of sec. 189 and that an appeal consequently lay to the District Judge (*Kulsum Bibi* v. *Bandi Bibi*; W. N., 1888 p. 65). In a suit in a Court of Revenue for ejectment on the plea that the plaintiffs were occupancy tenants and the defendant their tenant-at-will, the defendant pleaded that he was not the plaintiff's tenant but that the land from which the ejectment was sought was the *khudkasht* land of his father Dal Chand and was cultivated by him as such. Dal Chand was made a party to the suit which was decreed in favour of the plaintiff. *Held* that an appeal by Dal Chand was rightly filed in the Court of District Judge having regard to sec. 177 (*e*) of the Agra Tenancy Act 1901 (*Dal Chand* v. *Shamla*, W. N. 1905 p. 46; A. L. J. Vol. II. p. 56 (notes and comments); *Mewa Ram* v. *Kishen Behari*, S. D. B. R. No. 10 of 1903). In a suit for arrears of rent the tenant pleaded that the landlord plaintiff's rights had been purchased by B, who had forbidden him to pay rent to plaintiff. B on his own application was impleaded as defendant to the suit. The Assistant Collector decreed the claim, whereupon B. appealed to the District Judge. *Held* that a question of proprietary title having been raised; B had a right of appeal to the District Judge under sec. 177 (*e*) of the Act (*Sheo Dihal Singh* v. *Badri Narain*, A. L. J. Vol. II. p. 71) Where in answer to a suit to eject a tenant as being a tenant from year to year the defendant pleaded that she held proprietary (malikana) rights in the land and that she paid neither rent nor revenue, and the Court of first instance went into the question, and found that the defendant and her predecessor in title had held the land free of rent it was *Held* that an appeal lay in this case to the District Judge under section 177, clause(*e*) of the Agra Tenancy Act, 1901 (*Raj Bahadur* v. *Jasodhia*, W. N. 1905, p. 259).

The following were held *not to be questions of proprietary title*:—C sued J for the rent for certain land, alleging that he was the tenant of such land and J. was his sub-tenant. J. disputed C's right to receive rent for such land, alleging that he was

not his sub-tenant, but S's and had paid such rent to S. Under the provisions of sec. 148 of Act XVIII of 1873, S. was made a party to the suit. The Collector decided on appeal in the suit that S. and not C, was the tenant of such land, and J was her sub-tenant, and not C's and had paid such rent to S. *Held* that there was no determination by the Collector of the title to such land, but as incidental to the question who was entitled to receive the rent, and consequently the decision of the Collector was not appealable to the District Judge. (*Chotu* v. *Jitan*, I. L. R., 3 All., 63). See also *Mirza Anand Ram* v. *Masuma Begam* I. L. R., 13 All. p. 364; *Kishana Ram* v. *Hingu*, I. L. R., 4 All., 237; and *Kally Charan Banerjee* v. *Gopal Chunder Banerjee*, 26 W. R., 109. No appeal is given by sec. 153 Act X of 1859 in a case in which a lambardar sues a person as tenant who repudiates the tenancy without denying the landlord's title (*Eshan Chunder Ghossal* v. *Burno Moyee Dassee*, 16 W. R., 233); so where a rent suit is dismissed on the ground that there is no proof of the relationship of landlord and tenant existing between the parties, no appeal lies from the order of dismissal (*Kripa Moyee Debia* v. *Dropudee Chowdhrain*, 24 W. R., 213). So where a co-sharer in a patti sued the other (who had collected rents during the year in suit) to recover his share of the profits it was held that the suit did not involve any question of proprietary title (*Bhairon Singh* v. *Kalab Abid Ali*, W. N., 1884, p. 45); so also where the suit was dismissed on the ground that the plaintiff had ceased to have interest in the land (*Douzelli* v. *Tekan Nodaf*, 2 C. L. R., 558).

'Is a matter in issue in the appeal':—See notes under clause (*b*).

Old Act:—See notes under clause (*b*).

Clause (f):—A question of jurisdiction has been decided:—See notes under clause (*b*) sec. 180.

178. An appeal shall lie to the Board from the order of an Assistant Collector of the 1st class under section 52.

Appeals to Board.

This section is altogether new. Sec. 52 is also a new section. Under it Collectors may be invested with special powers to settle, reduce and commute rents.

According to para (5) of that section an order under that section is final except that a special appeal lies to the Board under this section.

As to procedure in appeal to the Board see Appendix B.

179. An appeal shall lie to the Commissioner from the decree of an Assistant Collector of the 1st class in any of

Appeals to Commissioner.

the suits included in Group (C) of the fourth schedule and from an order rejecting an application under section 59, or allowing further time under section 61.

This excludes cases in which a question of proprietary title has been raised and an appeal lies to the Dist. Judge under sec. 177. Vide notes under that section.

Procedure in appeal :—See Appendix B.

Appeals from Collectors.

Appeals from decrees and orders of Collector.

180. (1) An appeal shall lie from an original decree or order of a Collector in the same manner and under the same conditions as from a decree or order of an Assistant Collector of the 1st class.

(2) An appeal shall lie to the District Judge from an appellate decree of a Collector in any of the suits included in Group (A) of the fourth schedule in which—

(*a*) a question of proprietary title has been in issue in the first Appellate Court, and is a matter in issue in the appeal ; or

(*b*) a question of jurisdiction has been decided.

(1) This clause corresponds to sec. 189 of Act XII of 1881. See notes under sec. 177.

(2) This clause also corresponds to sec. 189 of Act XII of 1881.

The members of the Select Committee in their report printed at page 79 of the N. W. P. and O Gazette, dated 22nd June, 1901, say :—"We agree with the Justice Aikman's opinion that the present facilities for a second appeal to the District Judge on the merit from an appellate decree of the Collector should be restricted, but do not see our way to abolishing such appeals altogether. We have accordingly re-drafted the section limiting the grounds on which such appeal will lie."

'Appellate Decree' :—No appeal will lie from an appellate order of a Collector as distinguished from an appellate decree, in proceedings under the North-Western Provinces Tenancy Act, 1901, (*Dhani Ram* v.

Bhola Singh, W. N. 1904, p. 152, A. L. J. Vol. II. p. 308 ; Rev. L. J. Vol. I. p. 110).

District Judge:—See notes under sec. 177.

Clause (*a*) See notes under sec. 177 *clause (e)*. "*Questions of proprietory title.*"

Clause (*b*) '**A question of jurisdiction has been decided**' :—This means that a question of jurisdiction has been *decided* by the Collector as an appellate Court. Where a questien of jurisdiction had been decided by the Court of first instance (Assistant Collector), but was not raised before or decided by the appellate Court (Collector) it was held that no appeal will lie to the District Judge (*Zamin Ali Khan* v. *Genda*, W. N. 1904, p. 48 ; A. L. J. Vol. I. p. 105 ; Rev. L. J. Vol. I p. 107).

Appeals from Commissioners.

Appeals from decrees of Commissioner.

181. A second appeal on any of the grounds specified in section 584 of the Code of Civil Procedure shall lie to the Board from the decree of a Commissioner in any case in which he has reversed or modified the decree appealed against, otherwise than as regards costs.

This section corresponds to sec. 198 of Act XII of 1881.

Sec. 584 of the Civil Procedure Code is as follows :—

"584. Unless, when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds, (namely :—

Second appeal to High Court. Grounds of second appeal.

(*a*) the decision being contrary to some specified law or usage having the force of law ;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law ;

(*c*) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

An appeal may lie under this section from an appellate decree passed *ex-parte*.

The provisions of the section may be categorically stated thus :—

(1) An appeal lies under this section when the Commissioner has reversed or modified the decree appealed against.

(2) An appeal does not lie :

(*a*) When the Commissioner has affirmed the decree appealed against.

(*b*) When he has left the decree as it is but has made some order as regards costs.

Appeals from District Judges.

Appeals from decrees of District Judge.

182. A second appeal shall lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of Chapter XLII of the Code of Civil Procedure.

This section corresponds to sec. 191 of Act XII of 1881.

Chapter XLII of the Civil Procedure Code contains secs. 584 to 587 and deals with "appeals from appellate decrees."

Order of remand :—Section 190 of Act XII of 1881 makes s. 562 of Act XIV of 1882, applicable to appeals from a Court of Revenue to a District Judge, and where in such a case a District Judge has made an order of remand under sec. 562, an appeal will lie from such order to the High Court under sec. 588, clause (28) of Act XIV of 1882, (*Partap Singh* v. *Narain Das*, 16 All., 375). But under the provisions of the present Act this ruling will not apply because sec. 588 of the Code of Civil Procedure has been declared inapplicable to suits and proceedings in the Revenue Court by sec. 193 of the Act and therefore there is no appeal to the High Court from an order of remand passed by the District Judge. (*Vilayet Husen* v *Maharaja Mahendr Chundra Nandy*, W. N. 1905, p. 198).

Second Appeal :—It was held in *Jai Ram Rai* v. *Dulari Chand* (5 All., 309) that an appeal lies from the decision of the District Judge on appeal from an appellate decision of a Collector. But it appears that this ruling cannot apply now. The above ruling was passed with reference to sec. 191 of the old Act where the words used were "special appeal." It is not clear from the report upon what ground did the Hon'ble High Court hold that such an appeal does lie but the probability seems to be that the words "special appeal" gave rise to this ruling as they are wide enough to include second and third appeals. But the words used here are obviously of limited significance and cannot include third appeals.

Review.

183. The Board, on the application of a party to the case, may review and may rescind alter or confirm any decree or order made by itself, or by a single member.

Review by Board.

This section corresponds to sec. 201 A of Act XII of 1881.

Grounds for review :—It may be noted here that in sec. 184 which also treats of review the provisions of Chapter XLVII of the Code of Civil Procedure have been made applicable—not so in this section. Though by section 193 of the Act chapter XLVII of the Code of Civil Procedure has been made applicable to all suits and other proceedings under this Act, yet the intentional omission from section 183 and insertion in sec. 184 of the words "in accordance with the provisions of Chapter XLVII of the Code of Civil Procedure" show that the said chapter does not apply to applications under this section. To apply the provisions of that chapter would be "inconsistent with the provisions" of this section. The Board is therefore not bound to review its decree or order on the grounds mentioned in sec. 623 of the Code of Civil Procedure.

184. Every other Court shall be competent to review its judgment in accordance with the provisions of Chapter XLVII of the Code of Civil Procedure.

Review by other Courts.

This section corresponds to secs. 188 and 201 B of Act XII of 1881.

Under the Old Act review of judgment or order was allowed only in a suit or application in which the judgment or order was final under the provisions of that Act and it limited the ground for review to that of the discovery of new evidence. But this section does way with the above restrictions inasmuch as it expressly makes the provisions of Chapter XLVII of the Code of Civil Procedure relating to Review of Judgments applicable thereto.

Revision.

185. The Board may, on the application of a party to the case, or on report made, or of its own motion, call for the record of any case, which has come before any subordinate Revenue Court, other than a suit in which

Power of Board to call for cases.

the decree is appealable under section 177, if the Court appears to have exercised a jurisdiction not vested in it by law, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order thereon as the Board think fit.

This section corresponds to sec. 199 of Act XII of 1881.

Unlike sec. 199 of the said Act this section clearly lays down the grounds upon which the Board may exercise its powers of revision.

The jurisdiction exercised by the Board under this section is called Revisional or Extraordinary jurisdiction.

Extent of Board's Jurisdiction :—This section is similar to sec. 622 of Civil Procedure Code. The Board's revisional power under the present section is wider than that of the High Court because sec. 622 gives the High Court a power of revision only in cases where no appeal lies, while no such restriction is provided for in this section—the only case where the Board cannot exercise this power being "a suit in which the decree is, appealable under sec. 177." The Board's revisional power under sec. 199 of Act XII of 1881, extends to and includes all orders passed by any Revenue Court of a division or a district in any matter, whether application or suit, subject only to the exception of orders passed in suits appealable to a Judge (*Thakur Dayal* v. *Maharaja of Dumraon*, S. D. B. R., No. 6 of 1886, p. 80). In the exercise of revisional powers, it is not the duty of the High Court (the Board) to enter into the merits of the evidence, it has only to see whether the requirements of the law have been duly and properly obeyed by the Court whose order is the subject of revision, and whether the irregularity as to failure of jurisdiction is such as to justify interference with the order (*Muhammad Husain* v. *Ajudhia Prasad*, 10 All., 467). If the High Court finds that the external conditions of jurisdiction, of investigation and of command have been satisfied by the inferior court, it will not substitute its own appreciation of evidence, or its own judgment thereon, for the determination of the inferior court, in any matter committed by the Legislature to the discretion of the inferior court (*Shivanathaji* v. *Joma Kashinath* 7 Bom. 341).

How revisional jurisdiction can be exercised :—This section enumerates the various ways in which proceedings under this section may be instituted:—

(a.) On the application of a party to the case.

(b.) On report made,—e. g. by a Collector. Though a Collector has no power to revise the order of an Assistant Collector of the 1st class, passed on an application under sec. 40 (Act XVIII of 1873), yet he may refer the case to the Board for revision, *(Ashfaq Husain* v. *Kallan*, 2 L. R. R. R. S., p. 22*)* and he is not obliged to first summon the parties and hear them. *(Pahlad Singh* v. *Baldeo*, 2 L. R. R. R. S. p. 17) ; but he is not competent to remand a case, decided by one of his subordinates and not appealable to him, to the Lower Court for further enquiry, with a view to decide whether it should be submitted to the Board for revision *(Sukhrani* v. *Himayat Hussain*, 2 L. R., R. R. S. p. 16). A commissioner may also report.

(c). The Board may take proceedings under this section of its own motion. A High court can interfere under sec. 622 of C. P. C. without an application made to it by a party to the suit *(Andrew Anthony* v. *Dupont*, I. L. R. 4 Mad. 217).

Time in which application should be made :—No period of limitation is fixed for an application under this section, but in view of the case law it appears that an application under this section must be made without unnecessary delay ; so where an auction purchaser applied to the High Court to set aside, in the exercise of its powers under sec. 622 C. P. C. an order setting aside a sale of immoveable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seventeen months after the date of such order, the Court, having regard to the time that had elapsed before such application was made, refused to interfere—*In the matter of the Petition of Durga Pd.*, I. L. R., 4 All, 159. See also *Balmakund* v. *Sheo Jatan Lal*, I. L. R., 6 All., p. 125.

Procedure :—When once an application for revision has been accepted, the same procedure should be followed as in an appeal. The decision of the lower court should not be modified or reversed without notice to the party in whose favour it was given. (*Kanu Ram* v. *Basan Khan*, S. D. B. R., No. 11 of 1884.)

When revisional jurisdiction can be exercised :—The powers of the Board under this section can be invoked in any one of the following cases :—

(*1*) When the court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or

(*2*) when it has failed to exercise a jurisdiction vested in it by law, or

(*3*) it has acted in the exercise of its jurisdiction illegally or with material irregularity.

'Jurisdiction' :—Under this section the Board is authorized to interfere in cases in which a subordinate court has exercised a jurisdic-

tion not vested in it by law (*c. f. Mahomed Hamidullah* v. *Toharunnissa Bibi*, I. L. R., 25 Calc., at page 158 and cases referred to there) ; a Judge has no jurisdiction to pass, in a contested suit, a decree adverse to the defendant where there is no evidence or admission before him to support the decree and when the burden of proof is not or has not continued to be upon the defendant. If he passes such a decree, it is liable to be set aside in revision under sec. 622 of the Civil Procedure Code (*Shields* v. *Wilkinson* I. L. R, 9 All., 398). But it has been held by the Allahabad High Court in *Mehr Ali Shah* v. *Mahammad Husen*, (I. L. R., 14 All., 413) that unless the facts from which want of jurisdiction on the part of a subordinate Court may be inferred are patent on the face of the record the High Court will not interfere in revision.

'Failed to exercise jurisdiction' :—A merely erroneous construction of the provisions of an Act is not a ground for relief under sec. 622 of the Code of Civil Procedure, inasmuch as it could not be said that the subordinate court faild to exercise a jurisdiction not vested in him by law, (*Rabbaba Khanum* v. *Noorjehan Begam*, I. L. R., 13 Calc. p 90 ; see in this connection also, *In re Begram*, 20 W. R., 10 ; *Amir Hassan* v. *Sheo Baksh*, I. L. R., 11 Calc., 6 ; L. R. 11 I. A., 238 ; *Krishnamohun* v. *Kedarnath*, I.L.R., 15 Calc. 446 ; *Amrit rao* v. *Balkrishan*, I.L.R., 11 Bom. 488, *Kristamma* v. *Chapa*, I. L. R., 17 Mad. 410 ; *Mathura Nath* v. *Mahesh Chandra*, 1 C. W. N , 626 and *Raghunath* v. *Chatrapat Singh*, 1 C. W. N., 633) ; so the possible erroneous decision by a subordinate court of a question of law which that court had jurisdiction to decide can form no ground for the exercise of the High Court's revisional jurisdiction under sec. 622 of the Code of Civil Procedure (*Lachmen* v. *Bassante Bibi*, W. N. 1903. p. 12) ; but where a judge having at the instance of a person not a party to a suit refused to pass an order for the execution of the decree on the judgment creditor's application, it was held that in omitting to make such an order the judge failed to exercise a jurisdiction vested in him by law (*Nathubhai* v. *Nana*, 19 Bom., p. 544).

'Acted illegally' :—The expression "illegally" refers to cases where the court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law, or failed to determine some material issue of law or usage. See clauses (*a*) and (*b*) of sec. 584 C. P. C. (*Badamikuar* v. *Dinu Rai*, 8 All., 111). A subordinate court was held to have acted illegally if he imported into the case his own knowledg of particular facts (*Hurpershad* v. *Sheo Dayal*, L. R 3 I. A., pp. 285-6 ; 26 W.R.,55) ; so it was held that where a decision was arrived at by travelling beyond issues the lower Court acted illegally in the exercise of his jurisdiction (*Gorakh Babaji* v. *Vithal Narayan Joshi*, I. L. R., 9 Bom. 435). *Gurunath Shrinivas Desai* v. *Chenbasappa*, (18 Mad. 795) ; it was held

that an unregistered lease which by law required registration was inadmissible in evidence and could not be looked at. The clause on which the plaintiff sued could not be separated from the lease itself, and the plaintiff's claim must, therefore be rejected It follows therefore that if a court admits such a lease in evidence it acts illegally and his decision is liable to be set aside on revision.

But it was held that a wrong decision on the question of *resjudicata* is not a subject for the interference of the High Court on revision (*Hari Bhikaji* v. *Naro Vishvanath*, I. L. R., 9 Bom. 432); so also the fact that a court having power to decide whether or not a certain matter was barred by limitation, wrongly decided that it was not barred and proceeded to deal with it affords no ground for revision under sec. 622 of the Code of Civil Procedure (*Sunder Singh* v. *Daru Shanker*, I. L. R., 20 All., 78) see also 1 C. W. N., 67; *Ananda Lall* v. *Debendra Lal*, 2 Calc. W. N. cccxxxiv; but see 7 All., 345.

Material irregularity :—The words "a material irregularity" in sec. 622 of the Code of Civil Procedure include an irregularity affecting the merits of the case. An application of a section of the Code to a case in which it does not apply is a material irregularity within the meaning of the section (*Sheo Bux Bhogla* v. *Shib Chunder Sen*, I. L. R., 13 Calc. 225) see also 15 Calc. 47.

Clause (*c*) of sec. 584 indicates the meaning of the words "material irregularity" in sec. 622 *i. e.*, some material irregularity in procedure, "which may possibly have produced error or defect in the decision of the case upon the merits" (*Badami Kuar* v. *Dinu Rai*, I. L. R., 8 All., 111); where a court improperly refused to amend a decree, which was at variance with the judgment held that in so acting the court had acted in the exercise of its jurisdiction illegally and with material irregularity, within the meaning of sec. 622 of the Civil Procedure Code and its order was subsequently subject to revision under that section (*Balmakund* v. *Sheo Jatan Lal*, I. L. R., 6 All., 125). The third clause of sec. 622 is intended to authorize the High Court to interfere and correct gross and palpable errors of subordinate court so as to prevent gross injustice in non-appealable cases (*Bhagwan Ramanuj* v. *Khettro Mani Dasi*, 1 C. W. N. 617; *Mathura Nath* v. *Umesh Chandra*, 1 C. W. N., 626; *Raghunath Gujrati* v. *Chatrapat Singh*, 1 C. W. N., 633). An error of law does not amount to acting in the exercise of jurisdiction illegally or with material irregularity (*Enat Mandal* v. *Baloram Dey*, 3 C. W. N., 581); a Court that has decided a suit over which it had jurisdiction cannot, only on the ground that it has arrived at a wrong decision, be said to have exercised its jurisdiction illegally, or with material irregularity, within the meaning of s. 622 of

Act X of 1877, as amended by sec. 92 Act XII of 1879 (*Amir Hassan Khan* v. *Sheo Baksh Singh*, I. L. R., 11 Calc. 6: L. R., 11 I. A., 237) See also 16 Calc. 749 (*Muhammad Yusuf Khan* v. *Abdul Rahman*)

'Such order as the Board thinks fit':—The High Court may, under this section pass any order that it may pass on second appeal—*Maulvi Muhammad* v. *Syed Husain*, I. L. R.,3 All., 203; but also see in this connection 7 Bom. 534 and 7 All. 349. Where the decisions of the courts were without jurisdiction the court set aside both decisions and returned the plaint—*Sarnam* v. *Sakina*, I. L. R., 3 All. 417; so where the court after considering the evidence came to the conclusion that it was sufficient to justify the judge in allowing the case to go to a jury, it set aside the decree and dismissed the suit—*Shields* v. *Wilkinson*, I. L. R. 9 All. 398.

'Suits in which the decree is appealable under sec. 177':—Suits under sec. 93 Act XII of 1881 (not being a suit mentioned in sec. 189) are open to revision by the Board (*Yahya* v. *Fakiran*, 3 L. R., R. R. S., 28); an order of an Assistant Collector of the 1st class under sec. 128 (*b*) of the Rent Act is open to revision by the Board, unless it is an order passed in the course of a suit relating to the trial of a suit mentioned in section 189 of the Act (*Nabi Baksh* v. *Mohammad Yar Khan*, S. D. B. R., No. 6 of 1899). On the 13th of May 1902 an application for execution of a decree for arrears of rent was dismissed by an Assistant Collector. The decree-holder appealed to the Collector (instead of to the District Judge) who dismissed the appeal, but reported the case to the Board of Revenue. The Board of Revenue took up the case in revision and sent it back to the Court of first instance with direction to allow the 'decree-holder to amend her application. The application was accordingly amended and granted. *Held*, on appeal by the judgment-debtor that the order of the Board of Revenue in revision was *ultra vires*, the Board having no revisional jurisdiction in the matter: the Assistant Collector therefore had no power to rehear the case to make any order for execution. (*Naraini* v. *Parsanni*, W.N. 1905, P. 119; A. L. J. Vol. II (notes and comments) p. 166; Rev. L. J. Vol. II p. 30).

Transfer of Cases.

The law as to transfer of cases under this Act briefly stated is as follows:—

(1) High Court has power to transfer *appeals* from the court of one District Judge to that of another. It has no power to transfer any case from one Revenue Court to another.

(2) The Board has power to transfer *suits*, *application* or *appeals* from *any* Revenue Court to any other competent Revenue Court.

(3) The Commissioner has two fold power of transfer :—

(*a*) any suits, application or appeal from any Revenue Court *within his division* to any other competent Revenue Court also within his division.

(*b*) any *appeal* pending before him to the Collector but with the previous sanction of the Local Government.

(4) Collector or an Asistant Collector in charge of a sub-Division also has twofold power of transfer.

(*a*) any case pending before himself to any subordinate court competent to deal therewith.

(*b*) any case from any subordinate court to any other competent subordinate court and may if he likes try the case himself. This latter power is not given to the Board or to the Commissioner inasmuch as they cannot take the case from the file of any subordinate court and try it themselves ; they are authorized only, to transfer cases from one court to another.

Transfer of case by High Court.

186. Section 25 of the Code of Civil Procedure shall apply only to the transfer of appeals under this Act by the High Court from the Court of one District Judge to the Court of another District Judge.

This section is altogether new. It extends the provisions of section 25 C. P. C. to appeals under this Act ; thus giving the High Court power to transfer appeals from the Court of one District Judge to that of another. With this particular exception other provisions of the said section do not apply to proceedings under this Act, because section 193 provides " and section 25 of the Code shall apply only to the extent specified in section 186 of this Act"

Transfer of cases by Board.

187. The Board may, on sufficient cause being shown, transfer any suit, application or appeal or class of suits, applications or appeals, from any Revenue Court to any other Revenue Court competent to deal therewith.

This section corresponds to sec. 100 A of Act XII of 1881.

Section 100 A was added by Act XIV of 1886, to prevent an officer being forced to try a case in which he is interested in his executive

capacity, such as President of a District or Municipal Board or Manager of the Court of Wards (see statement of object and reasons Gazette of India, February 20, 1886, pt V. p. 56.)

This section gives the Board nearly the same powers of transfer of suits as section 25 of the C. P. C. gives to the High Court; but while the High Court may after transfer, try the suit itself, the Board has no such power.

Jurisdiction :—If the Court of first instance has no jurisdiction to hear the suit, this defect is not cured by transferring the case to another Court having jurisdiction—*Pachaoni* v. *Ilahi Baksh*, I. L. R, 4 All. 478 and no order of transfer should be made—(*Peary Lall* v. *Komalkeshore* I. L. R., 6 Calc. 30; *Bachoni Awasthe* v. *Ilahi Baksh*, 3 L. R., H. C. S. p. 104,) but when the parties assented to the transfer of the suit, and its transfer brings it into the right court, the fact that the suit had been originally instituted in the wrong court did not render the transfer illegal, and the Court having jurisdiction had properly tried the suit (*Petman* v. *Bull*, I. L. R., 5 All., 371) and this consent must be such that the Court will infer that the defendant did in point of fact waive all objections and engage that the cause should be tried on its merits by the second Court. For this view *Ledgard* v. *Bull*, (I.L.R. 9 All., 191) is an authority. There a suit, having been instituted in a Court not of competent jurisdiction, was transferred with the consent of parties, to a Court which was competent; but the defence of jurisdiction was set up before the issues were fixed, and was afterwards insisted on throughout. Held that in the simple fact that the defendant had personally concurred in the transfer, there had been no waiver of the right to maintain this defence, and that the suit must be dismissed on the ground that it was not competently brought. When a suit is transferred from one court to another, the court to which the suit is transferred has all the powers of the original court as to rejecting or returning the plaint, 3 L. R. H. C. S, p. 104.

Sufficient cause :—Expense and convenience are sufficient grounds for transfer. The High Court has transferred civil case on the above grounds. *Khatya Bibi* v. *Taruk Chunder Dutt*, I. L. R. 9 Calc., 980 13 C. L. R., 182.

Extent of power :—The Board has absolute power under this section to transfer cases from one Revenue Court to another Revenue Court irrespective of the fact that an appeal lies in the suit to civil court.

188. A Commissioner may exercise the same powers within the limits of his division as the Board under the last preceeding section.

Transfer of case by Commisioner.

This section is altogether new.

Jurisdiction :—see notes under section 187.

Sufficient cause :—see notes under section. 187.

189. (1) A Commissioner may with the previous sanction of the Local Government, transfer any appeal or class of appeals pending before himself to any Collector within his division.

Transfer of appeals by Commisioner to Collector.

(2) The order passed by a Collector on an appeal transferred to him by a Commissioner under sub-section (1) shall be subject to appeal and revision in the same manner as if it had been passed by the Commissioner.

(3) The Local Government may by order recall any appeal or class of appeals transferred to a Collector under sub-section (1), and refer the same for disposal to the Commissioner.

This section corresponds to section. 100 B. of Act XII of 1881 which was added to that Act by Act XIV of 1886 to alleviate the pressure of work, more specially in the Meerut and Benares Divisions (Statement of objects and reasons ; Gazette of India, February 20, 1886, Pt. v. p. 56 ; supplement, February, 27, 1886. p 302 ; Report, June 12, 1886 Pt v. p. 248 Supplement, June, 12, 1886, p. 897).

Stamp on Vakalatnamah :—In cases transferred to a Collector under section. 189 of the N. W. P. Tenancy Act, the stamp required on a vakalatnamah or mukhtar namah presented to the Collector is 8 annas under Art. 10 (*a*) and not one rupee under Art. 10 (*b*), Sch, II, Act VII of 1870.

Secs. 188 and 189 :—Under sec. 188 the Commissioner is authorized like the Board to transfer *cases from any Revenue Court to any other Revenue Court.* But unlike the Board the Commissioner can exercise

this power only within his Division while under sec. 189 the Commissioner is authorized to transfer *appeals from his own file* to that of the Collector and for this he is required to obtain the previous sanction of the Local Govt.

Transfer of cases by Collector or Assistant Collector.

190. A Collector or an Assistant Collector in charge of a sub-division may transfer any case, or class of cases, pending before himself, to any subordinate Court competent to deal therewith.

This section corresponds to sec. 102 of Act XII of 1881.

'Any case':—*i, e.* any suit or application.

Withdrawal of cases by Collector or Assistant Collector.

191. A Collector or an Assistant Collector in charge of a sub-division may withdraw any case or class of cases from any Court subordinate to him and may try such case or class of cases himself, or transfer the same to any other subordinate Court competent to deal therewith.

This section corresponds to section 101 of Act XII of 1881.

CHAPTER XIII.

PROCEDURE.

Place of sitting of Revenue Courts.

192. (1) The Board may sit for the disposal of cases under this Act at the head-quarters of any district in the North-Western Provinces.

(2) Every other Revenue Court shall sit for the disposal of such cases as provided in section 189 of the North-Western Provinces and Oudh Land Revenue Act, 1901,

This section corresponds to sec. 152 of Act XII of 1881.

The members of the Select Committee in their report printed at page 79 of the N. W. P and O. Gazette, dated 22d June, 1901, say :—"we have redrafted this section in accordance with the existing law as to the Board ; and, as to other Revenue Courts ; a referance to the North-Western Provinces and Oudh Land Revenue Bill, which provides for them, seems to be all that is required."

Court in Camp :—When a Court is held in Camp, a party failing to appear should not be treated as absent unless due notice of the place where, and time when, the case is to be heard, has been given to him and due time allowed to him to appear (*Shaikh Mahammad Husain* v. *Umrao* W. N. 1893. p. 175 ; S. D. B. R. No. 9 of 1893).

Application of Code of Civil Procedure.

193. The provisions of the Code of Civil Procedure shall apply to the procedure in all suits and other proceedings under this Act so far as they are not inconsistent therewith, and subject to the following modifications and additions :—

(*a*) Clause (*a*) of the second proviso to section 266, sections 320 to 326 (both inclusive), Chapter XX, section 370, and Chapters XXVI, XXXIII, XXXIX, XL, XLIII, and XLIV of the Code of Civil Proceedure shall not apply to any such suit or proceeding; and section 25 of the said Code shall apply only to the extent specified in section 186 of this Act.

(*a*) Applications under sections 85, 105, 111, 117, and 126 may be disposed of *ex parte*.

(*c*) In clauses (*a*) and (*c*) of section 37 of the said Code for the words "not resident" shall be substituted the words "whether resident or not."

(*d*) In addition to the particulars required by section 50 of the said Code, the plaint shall specify the name of the village or mahál, and of the pargana or other local division, in which the land is situate to which the suit or other proceeding relates, and (unless such land can be otherwise adequately described) the number of each field according to the Government survey;

and if the suit is for arrears of rent, the plaint shall contain a statement of account showing the annual demand for each period to which the suit relates, the amount (if any) received, and the amount claimed to be due;

and if the suit is for the ejectment of a tenant, the plaint shall set forth the ground or grounds on which the ejectment is sued for.

(*e*) In all suits under this Act the summons to the defendant shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only.

(*f*) The service of summons or notice may, if the Local Government by rule, either generally or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons or notice by post in a cover registered under the Indian Post Office Act, 1898; and when a summons or notice is so forwarded, and it is proved that the cover was duly registered and posted, the Court may presume that the summons or notice has been duly served.

(*g*) No set-off shall be allowed in any suit under this Act except a sum due to the defendant on an unsatisfied decree under this Act or under any enactment hereby repealed.

(*h*) After paragraph 2 of section 206 of the said Code the following words shall be inserted:—

"If the decree is for arrears of rent, it shall also state the amount (including interest) due on account of each agricultural year in respect of which relief has been granted."

(*i*) Notwithstanding anything contained in section 232 of the said Code, an application for the execution of a decree shall not be made by an assignee of the decree unless

the assignor's interest in the land to which it relates has become and is vested in such assignee.

(*j*) To the particulars not liable to attachment or sale under section 266 of the said Code shall be added: "manure stocked by an agriculturist."

(*k*) Standing timber, growing crops, or other products of the earth may be attached and sold in execution of a decree in the same manner as moveable property, and if the property attached is growing crops or other products of the earth, the judgment-debtor and the decreeholder shall have the same rights in respect of the tending, gathering and storing thereof as the cultivator and the distrainer respectively would have had under section 124 if such crops or products had been distrained for an arrear of rent.

(*l*) If the property against which execution is applied for is a mahál, or a share of a mahál or the holding of a permanent tenure-holder, the decree shall be sent to the Collector, who shall execute the same as if it had been a decree of his own Court.

(*m*) Notwithstanding anything contained in section 341 of the said Code, if the judgment-debtor has been discharged from jail and the amount due under the decree does not exceed one hundred rupees, the Court may declare him absolved from further

liability under that decree, and such liability shall thereupon be extinguished.

The provisions of this section are new and have been taken from Oudh Rent Act section. 125.

Clause (a) This clause is new. The members of the Select Committee in their report printed at page 79 of the N.-W. P. and O. Gazette, dated 22d June, 1901, say :—"we have gone carefully through the Code of Civil Procedure to ascertain which of its provisions should, in our opinion, apply to cases in the Revenue Courts and which should be excluded, and have amended the clause accordingly.

We have omitted clause (*b*), as clause (*c*) of section. 197 of the Code appears to be sufficient for all purposes. We have also omitted clause (*v*) as section 392 of the Code clearly implies that a Court may make a local investigation itself, and section. 200 (now section 192) of the Bill allows a Revenue Court to sit at any place within the district, and nothing further appears to be required."

Clause (a)

Clause (a) of the second proviso to section 266 :—As this clause has been declared inapplicable to suits and other proceedings under this Act it follows that the materials of houses and other buildings shall be exempted from attachment or sale in execution of decrees for rent.

Sections 320 to 326 :—These sections relate to the transfer of the execution of certain decrees to Collector, and to the procedure which he is to follow. The provisions of these sections are obviously unnecessary for suits and proceedings under this Act in view of the special provision made under the act.

Chapter XX and section 370 :—This Chapter treats of "Insolvent Judgment-Debtors" and section 370 deals with the effect of insolvency of the plaintiff on suits. As insolvency jurisdiction is conferred upon Civil Courts only ; the inapplicability of these sections to proceedings under this Act is obvious.

Chapter XXVI and XLIV :—These chapters deal respectively with suits and appeals by paupers. Therefore a pauper cannot sue in a Rent Court as he can do in a Civil Court.

Chapter XXXIII :—Treats of Interpleader suits. As the cases contemplated by this Chapter have been provided for by section 111 clause (*c*) and the following sections it was unnecessary to apply it to suits and proceedings under this Act.

Chapter XXXIX and XL:—Deal respectively with Summary Procedure on "Neogotiable Instruments," and suits relating to "Public Charities." These chapters give special jurisdiction to Civil Courts. They are unnecessary for the purposes of this Act.

Chapter XLIII:—This chapter deals with appeals from orders. Section 588 by which certain orders are made appealable appears in this chapter. Under the provisions of the present Act an appeal lies from the decree or order of an Assistant Collector of the second class to he Collector (sec. 176); and an appeal lies from the *decree* of an Assistant Colector of the first class to the District Judge (sec. 177). In the latter case the word order is omitted. It follows, therefore, that an appeal from the decision of an Assistant Collector of 1st class, will lie to the Judge when it falls within the definition of decree as given in section 2 of the Code of Civil Procedure; but if it falls within the category of orders appealable under sec. 588 of the Code, no appeal lies. This however will not be the case with such orders of an Assistant Collector of the 2nd class, because they are specially made appealable to the Collector by clause (*c*) sec. 176 of the present Act. For what are decrees and what are orders within the meaning of sections providing for appeals see notes under sec. 177 under "Decree."

Clause (c):—By substituting the words "whether resident or not" parties are given more extensive powers to act and appear by recognized agents. Under the Code of Civil Procedure no party who is resident within the local limits of the jurisdiction of the Court, can act and appear by recognized agents referred to in clauses (*a*) and (*c*) of sec. 37 of the Code; while the effect of the substitution of the above words is that in Revenue Courts any party whether resident or not can so appear and act.

Clause (d):—This clause corresponds to sec. 110 of Act XII of 1881 and to sec. 137 of Oudh Rent Act XXII of 1886.

Clause (e):—This clause is taken from sec. 148 (*c*) of the Bengal Tenancy Act and Sec. 139 of Oudh Rent Act.

Clause (f):—This clause is taken from Bengal Tenancy Act, sec. 148 (*d*).

May presume:—In *Lootf Ali* v. *Pearee Mohan* (16 W. R., p. 223) and *Jogendra Chunder Ghosh* v. *Dwarka Nath Karmokar*, (I. L. R., 15 Calc. 681) it was held that a person refusing a registered letter sent by post cannot afterwards plead ignorance of its contents. It is on the principle of these rulings that this clause appears to have been drafted.

Clause (g):—This clause is new and is drafted on the lines of sec. 140 of Oudh Rent Act.

Under the Code of Civil Procedure the condition for a claim of set-

off is that it should be an ascertained sum and legally recoverable, no matter whether a decree has been obtained for the same or not ; but this clause limits the claims of set-off only to those cases in which a decree has already been obtained and is unsatisfied. The decree must have been passed under the present Act or under any enactment hereby repealed. In other words the relation of landholder and tenant or that of co-sharers must exist between the parties to the decree sought to be set off.

Section 70 allows a tenant to set-off the amount of compensation which is awarded to him for improvements against any claim for arrears of rent due from him. In the same way sec. 76, clause (3) allows the landholder to deduct from the price of the crop of the tenant any rent due from him in respect of the holding from which he is ejected.

Suit for profits :—A suit for profits for three years under sec. 93 (*h*), Act XII of 1881, should be treated in the same way as one for settlement of accounts. Assets in one year should be allowed as a set-off against deficits on another, and the result be subject to one decree, (*Bahadur Singh* v. *Thakur Singh*, S. D. B. R., No. 5. of 1883). In determining the amount of profits due to a co-sharer, the Court should not take notice of an alleged set-off on account of food and clothing (*Musammat Tejni* v. *Jiva Singh*, S. D. B. R., No. 1 of 1887) ; nor on account of funeral expenses (*Mula Kuar* v. *Ulfut Singh*, W. N. 1886 p. 172).

Claims of set-off entertainable by Revenue Courts :—A court of Revenue cannot entertain a claim to a set-off unless such claim, if made the subject of a suit, would fall within its jurisdiction (*Beni Madho* v. *Gya Pershad*, W. N., 1893, p. 168 ; I. L. R. 15 All., 404). see also *Hafiz Suleman* v. *Baroda Das*, W. N. 1899. p. 143.

Clause (h) :—This clause is new.

Clause (i) :—The provisions of this clause have been taken from the Bengal Tenancy Act sec. 148 Clause (*h*).

Cases where this clause would not apply :—Upon the death of the full owner, the mother took out probate of a will in which she was appointed executrix. The will was afterwards disputed by the minor son of the testator, and probate was revoked : but, while the mother was in possession of the estate as executrix, she sued and obtained a decree for rent under Bengal Act VIII of 1869 Upon the application of the minor for the execution of the decree : *Held*, that the minor was in a position to execute the decree ; his succession to the estate of his father being a succession or transfer by operation of law within the meaning of sec. 232 of the Code of Civil Procedure (*Uma Soondury Dassy* v. *Brojo Nath Bhattacharjee*, 16 Calc. 347) ; the word "assignee" as used

in section 148, (*h*), of the Bengal Tenancy Act, does not include trustees who execute decree under an assignment which is not for their own benefit but for the benefit of the heir of the assignor (*Chattrapat Singh* v. *Gopi Chand Bathra*, 26 Calc., 750).

Assignment before the Act :—The fact that an assignment of a decree for arrears of rent was made before the Tenancy Act will not protect from the provisions of sec. 148 (*h*) of the Bengal Tenancy Act an assignee who proceeds to execution afterwards ; but execution cannot be refused where, before that Act came into operation, the assignment had been recognized by a Court of execution under sec. 232 of the Civil Procedure Code (*Koilash Chunder Roy* v. *Jodu Nath Roy*, 14 Calc. p. 380).

Decree passed before but assigned after the passing of the Act :—Though the decree was passed under the former Act, the assignment of the decree and the application for execution by the assignee having been made after the Bengal Tenancy Act came into operation, clause (*h*) of sec. 148 of that Act must apply to the execution proceedings (*Sashi Bhushan Guha* v. *Gogan Chandra Saha*, I. L R., 22 Calc. 364).

'Vested' :—In a case in which an *ijaradar* on the expiry of his lease sold all his decrees for rent and all arrears of rent due to him to three persons, two of whom were his superior landlords, it was contended that section 148 *h*) was no bar to the execution of the decrees, as the landlord's interest had vested in the superior landlords on the determination of the ijara. It was, however, held that sec. 148 *(h)* was a bar to the execution, as the *ijaradar's* interest as landlord had not vested in the superior landlord (*Dwarka Nath Sen* v. *Pyarimohun Sen*, 1 C. W. N., 694).

Clause (j) :—This clause is altogether new.

Clause (k) :—This clause is altogether new.

Standing timber and growing crops :—In *Ajaib Singh* v. *Rani Gumani Kuar* (S. D. B. R. No. 3 of 1889) it was held that standing trees and growing crops are immoveable property for the purposes of the execution clauses of the Rent Act. But this does not apper to be the law now, because this clause clearly provides that they can be attached and sold in execution of a decree in the same manner as moveable property.

Clause (l) :—This clause corresponds to sections 173 to 181 of Act XII of 1881.

Clause (m) :—This clause corresponds to sec. 164 of Act XII of 1881.

194. (1) Where there are two or more co-sharers in any right, title or interest, all things required or permitted to be done by the possessor of the same shall be done by them conjointly, unless they have appointed an agent to act on behalf of them all.

Suits, &c., by co-sharers in undivided property.

(2) Nothing in sub-section (1) shall affect any local custom or special contract by which a co-sharer in an undivided property is entitled to receive separately his share of the rent payable by a tenant.

(3) When one of two or more co-sharers is not entitled to sue alone, and the remaining co-sharers refuse to join as plaintiffs in a suit for money recoverable by them jointly, such co-sharer may sue separately for his share thereof, joining the remaining co-sharers as defendants.

This section corresponds to sec. 106 of Act XII of 1881 and to sec. 188 of the Bengal Tenancy Act V of 1888.

Application of the section :—This section does not apply to a suit by one of several co-mortgagees, (*Shib Gopal* v. *Baldeo Sahai* I. L. R., 2 All. p. 264); M and S were joint leseors of certain land by a kabulyat which did not contain any specification of the shares of the lessors. M, stating that the share of rent due to S. had already been paid, sued the lessee for the recovery of his own share. The amount claimed was all that remained due on the lease. Held that the plaintiff was entitled, as one of the joint lessors, to sue for the balance of rent, and that his suit was therefore not barred by the terms of sec. 106 of the N. W. P. Rent Act (XII of 1881) (*Murlidhar* v. *Ishri Prasad* I. L. R., 6 All., 576); in an undivided Mahal the lambardar can apply to determine the rent payable by an exproprietary tenant without joining other co-sharers and that sec. 106, Rent Act, applies to tenants whose rent has been determined (*Sardar Singh* v. *Puhup Singh*, S. D. B. R., No. 1 of 1897); the lambardar of a mahal, as representative of the co-sharersl is entitled to bring a suit under sec. 150 of the Tenancy Act, for resumption of a rent-free grant, and the assent or dissent of the co-sharers is immaterial unless there exist special circumstances disabling the lambardar from exercising the right to resume; held also that clause

(1) of section 194 does not affect the lambardar's right to sue (*Deepa* v. *Udai Ram*, S. D. B. R. No 6 of 1903). A lambardar has no general power to grant any lease of co-parcenary land beyond such as the circumstances of the particular year or the particular season may require (*Jagan Nath* v. *Hardyal*, W. N. 1897 p. 207 ; *Bansidhar* v. *Dip Singh*, W. N. 1898, p. 193).

Principle of the section :—The presumption being that a tenant of land belonging to several co-sharers is a tenant under a single liability to all the co-sharers, the rule is that all the co-sharers must join in every action taken with respect to the tenancy, 20 W. R. p. 76 also 5 All. p. 40.

Clause (1) :—This clause lays down the general rule that co-sharers in an undivided property must all join in every suit or proceeding aginst their tenant. The only exception to this rule which holds good in all cases is where they have appointed an agent.

Two or more co-sharers :—The mere fact of there being other co-sharers in an undivided *Mahal* is not sufficient to put the plaintiff out of court in a suit for enhancement in respect of a particular plot of land, and the proper issue in such a case is, whether the defendant tenant has been holding under the plaintiff separately or under a joint lease from the plaintiff and his co-sharers in the mahal—(*Rash Behari Mukarjee* v. *Sakhi Sundari Dasi*, I. L. R. 11 Calc., p. 644). A tenure was held under a zemindari which originally formed one entire estate. The estate was subsequently partitioned by the revenue authorities into four several estates. The rent of the tenure was thereupon allotted proportionately to each of the four estates thus formed, although the land forming the tenure remained undivided. In a suit for enhacement of the rent of the tenure brought by the proprietor of some of the estates ; *Held*, that the effect of the partition of the parent estate was to create separate and distinct tenures out of the original single tenures under the proprietors of each of the estates ; that the proprietors of the several estates were not joint landlords of the tenure within the meaning of section 188 of the Bengal Tenancy Act ; and that therefore a suit for enhancement for rent would lie by a proprietor of one of the estates in respect of the rent alloted to his estate (*Hem Chandra Chowdhry* v. *Kali Prasanna Bhaduri*, I. L. R. 26 Calc. p. 832). Four co-sharers in an undivided property gave a lease to two tenants there being no separate specification in the lease of any separate liability to the lessors. *Held*, that one of the lessors could not sue separately for his share of the rent (*Girja Nath* v. *Ram Prasad*, W. N. 1898, p. 129).

Agent :—In a case where there were several joint landlords it is

necessary for the Court, before giving effect to the presumption under sec. 56, clause (4) of the Bengal Tenancy Act, to find affirmatively that the agent was authorized by them all either verbally or in writing (*Gopinath Chakravarti* v. *Umakant Dass Roy*, I. L. R. 24 Calc. p. 169).

When one of several co-sharers can sue alone:—When several co-sharers have served a joint notice to quit, upon which notice they jointly institute a suit for the recovery of the land, the fact that one of the plaintiffs withdraws from the suit will not prevent the remaining plaintiffs from obtaining a decree for possession of their shares of the land—*Dwarkanath Rai* v. *Kali Chundar Rai*, I. L. R., 13 Calc. 75.

Clause (2):—This clause provides for another exception to the general rule contained in clause (1); *i. e.*, when a co-sharer in an undivided property is either by (*a*) special contract or by (*b*) local custom entitled to receive separately his share of the rent payable by a tenant, he need not join all the co-sharers in every action with respect to the tenancy.

Burden of proof:—In a suit for rent by a shareholder where defendant contends that he is not bound to pay otherwise than by entirety to the person entitled to the whole rent, the onus is on plaintiff to show that he is entitled to sue for a fractional portion (*Musammat Lalun* v. *Hemraj Singh*, 20 W. R., 76). In a suit for arrears of rent, and for ejectment in consequence of non-payment, where defendant challenged the rate claimed as well as plaintiff's right to sue alone. *Held* that the *onus* lay on the plaintiff to prove his claim to the rate of rent sued for and to show that he was sole proprietor (*Shaikh Ashruf* v. *Ram Kishore Roy Ghose*, 23 W. R. 288).

Old Act:—Under the old Act also there was an exception to the above general rule to the following effect:—"But nothing in this section shall affect any local custom or special contract". With reference to this exceptional provision it was held that it will not hold good in every case: for instance in cases of enhancement—(*Kashikishore Roy Chowdhree* v. *Alip Mundal*, 6 Calc. 149; *Mahomed Said-ood-deen* v. *Mahommed Hassein*, 2 N. W. P., 438; *Sujun Koer* v. *Heitoo* 1 N. W. P., 165; *Raj Chunder Majoomdar* v. *Rajaram Gope*, 22 W. R., 385; *Gopal Chunder Das* v. *Umesh Narain Chowdhury*, 17 Calc., 695; *Guni Mahomed* v. *Moran*; I.L.R., 4 Calc. 96; *Doorga Proshad Mytse* v. *Joynarain Hazra*, I. L. R. 4 Calc., 96; *Bharrat Chunder Roy* v. *Kally Das Dey*, 5 Calc., 574 *Haladhar Saha* v. *Rhidoy Sundri*, 19 Calc., 593) or in applications or suits for ejectment (*Hidayatoollah* v. *Inderjeet Tewaree*, 2 Agra, 282) or in an application for lease or counterpart—(*Udaya Charun Dhar* v. *Kalitara Dasi*, 2 B. L. R. Ap. 52; *Saratsundari Debi* v. *Watson*, 2 B. L. R., A. C., 159) and in several other cases. But from the wordings of this clause it

seems clear that this exception will hold good in every case and thus a co-sharer entitled to receive separately his share of the rent can do every thing that he is required or permitted to do separately without joining the other co-sharers.

Clause (3):—This clause also contains an exception to the general rule; but this exception is not general in its scope like the other two exceptions mentioned above. It applies only to "suits for money". The exception means that if in a suit for money recoverable by them, all the co-sharers do not join, it is competent for any one of them to bring the suit making the other co-sharers defendants.

But a co-sharer can avail himself of this exception only when he establishes that the other co-sharers *refused* to join as plaintiffs and even then he can sue for *his share* only.

CHAPTER XIV.

CONFLICT OF JURISDICTION AND QUESTIONS OF TITLE.

Conflict of Jurisdiction.

195. (1) If in any suit, application, or appeal filed in a Civil or Revenue Court, the Court doubts whether such suit, application, or appeal should be filed in a Civil or a Revenue Court, it may submit the record, with a statement of the reasons for its doubt, to the High Court.

Power to refer to High Court question as to jurisdiction.

(2) If the Court is a Revenue Court subordinate to a Collector, no such reference shall be made except with the sanction of the Collector previously obtained.

(3) On any such reference being made, the High Court may order the Court either to proceed with the case, or to return the plaint, application, or appeal for presentation to such other Court as it may declare to be competent to try the same.

(4) The order of the High Court on any such reference shall be final.

This section corresponds to sec. 205 of Act XII of 1881.

Old Act:—Under Act XII of 1881 no reference could be made to the High Court when the Court entertained a doubt as to whether a particular *application* should be filed in a Civil or a Revenue Court, but express provision has been made by this section and "applications" have been placed on the same footing with suits and appeals.

Questions to be referred under this section:—Under this section a Court is empowered to refer a question of Jurisdiction only but under sec. 617 C. P. C. read with sec. 193 of the present Act

any other question on which the Court feels a reasonable doubt may be referred to the High Court. In *Radha Mohan Parshad* v. *Maharaja Radha Parshad*, 1, L. R. H. C. S. p. 58, it was held that the "doubt" mentioned in clause (*a*) of sec. 205 of Act XII of 1881, must be a doubt as to whether the suit or appeal is cognizable in the Civil or in the Revenue Court, and not merely as to whether the suit or appeal is cognizable at all. Under section 195 of N. W. P. Tenancy Act, 1901, a reference can be made where the court making the reference entertains a doubt as to the *forum* where an appeal lies, but not as to whether an appeal lies at all (*Janor* v. *Mansur Khan*, A. L. J. Vol I., p. 37).

'The Court doubts' :—Before the provision of this section can be made applicable the court itself must entertain a reasonable doubt. In *Rau Rani* v. *Chander Bhan*, W. N. 83, p. 136, it was held that this section has no reference to cases in which the court itself has no doubt, but it is simply asked by one of the parties to refer the matter to the High Court.

Questions under N. W. P. and Oudh Land Revenue Act :—A reference can be made under this section in questions arising under N. W. P. & Oudh Land Revenue Act III of 1901 (*Tulshi Rai* v. *Gate Ram Rae*, W. N. 1904, p. 225).

196. When, in a suit instituted in a Civil or Revenue Court, an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the Appellate Court unless such objection was taken in the Court of first instance; but the Appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

As to plea in appeal that suit was instituted in wrong Court.

This section corresponds to sec. 206 of Act XII of 1881.

The members of the Select Committee in their report printed at page 80 of the N. W. P. and O. Gazette dated 22nd June, 1901, observe :—"In section 203 B, now sec, 196 which has been substituted for old section 177, we have reverted to the provisions of sec. 206, Act XII of 1881. The section can only be made applicable to cases in which an appeal lies to the Civil Court ; that Court has jurisdiction in appeals both from the Civil and Revenue Courts ; it cannot be applied to Revenue Court cases"

'An appeal to the District Judge or the High Court' :—As to when appeal lies to the above courts vide provisions of sec. 177, 180 clause (2) and notes thereunder.

'A suit instituted' :—The provisions of this section apply only to those cases which could be made the subject of suits in the Revenue Court and not to those cases in which the remedy will be by application, vide—

Ramautar Rai v. *Musammat Talimundi Kuar* N. W. P. H. C. Rep, 1875, p. 49 ; *Debi Das* v. *Ram Rattan*, 3 L. R. H. C. S. 221 ; *Debi Das* v. *Ram Rattan*, W. N., 1882, p. 213 ; *Ram Partap Singh* v. *Dharam Singh*, W. N. 1885, p. 281 ; *Jagannath* v. *Bhagwant Das*, W. N. 1887, p, 266 ; *Asghar Ali* v. *Sheopal Singh*, W. N. 1889, p. 24 ; *Ahmaduddin Khan* v. *Khawani*, W. N. 1889, p. 193 ; *Badam* v. *Badri Das*, W. N. 1900, p. 209.

An objection as to jurisdiction may not relate to the whole of the suit :—*Lachmin Narain* v. *Bhawani Din*, W. N. 1882, p. 87 ; 4 All., 379 ; *Badri Nath* v. *Bhajan Lal*, W. N. 1882, p. 216.

'Appellate Court' :—includes the Court to which the appeal may have been transferred. The provisions of this section would apply where appeals have been transferred by a District Judge and are being heard by the subordinate Judge, *Babu Nandan Pal* v. *Changur*, W. N. 1894, p. 113, 16 All., 363.

'Shall not be entertained' :—If an objection was not taken in the court of 1st instance the appellate court is to disregard it and to dispose of the appeal independent of all considerations as to whether the 1st court had or had not jurisdiction. *Debi Saran Lal* v. *Debi Saran Upadhya*, 1. L. R., 6 All., p. 378 ; *Madho Lal* v. *Sheu Pershad*, W. N. 1890, p. 162, 12 All., p. 419.

Procedure when such objection was taken in Court of first instance.

197. (1) If in any such suit objection was taken in the Court of first instance, but the Appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

(2) If the Appellate Court has not before it all such materials, and remands the case, or frames and refers issues for trial, or requires additional evidence to be taken, it may direct its order either to the Court in which the suit was instituted, or to such Court as it may declare to be competent to try the same.

(3) No objection shall be taken or raised in appeal or otherwise to any such order on the ground

that it has been directed to a Court not competent to try the suit.

This section corresponds to sections 207 and 208 of Act XII of 1881.

Suit :—See notes under section 196.

Clause (1) :—

Section does not apply :—The appellants, co-sharers in a certain patti, sued the respondents in the Revenue Court for their share of the profits, on the ground that the respondent was the lambardar of the patti. It was found that the respondent was not the lambardar of the patti in question. The court holding that the suit as brought in the Revenue court failed, observed that secs. 206 and 207 of the Rent Act did not empower the Lower Appellate Court or the High Court to deal with the suit, when its charcter and the *status* of the plaintiff to sue had been entirely altered (*Rai Kishen* v. *Har Sarup*, W. N. 1883, p. 20.)

When the Court of appeal to exercise its powers :—A suit was instituted in the Court of an Assistant Collector. An objection was taken that the plaintiff not being a recorded co-sharer, the suit was not maintainable in the Revenue Court. The objection was allowed but the court, at the same time, disposed of the case on the merits and dismissed the suit. On appeal the lower appellate Court affirmed the decree on the ground that the Revenue Court had no jurisdiction in the matter. Held, that, as there were materials on the record for the determination of the suit, the judge should have disposed of the appeal on the merits (*Sheo Prasad* v. *Anrudh Singh*, W. N. 1884, p. 154, I. L. R., 6 All, 440.) A suit by one recorded co-sharer against another for his recorded share of the profits of a mahal was decreed by the Deputy Collector acting under Sec. 93 (*h*) of the N. W. P. Rent Act. On appeal, the District Judge dismissed the suit on the ground that a suit under section 93 (*h*) of the Act would lie against the lambardar only. Held that whether or not this view were correct, still the plaintiff could unquestionably sue the defendant for money payable by him to the plaintiff for money received by the defendant for the plaintiff's use, and if such a suit were wrongly brought in a Revenue Court, the error could be cured in appeal under sections 207, 208 ; and the District Judge's order was nullity and must be set aside (*Bansidhar* v. *Behari Lal*, W. N. 1888, p. 74). An occupancy tenant made a lease for twenty years of her occupancy holding and put the lessees in possession. The zemindar thereupon sued in the Munsiff's Court to have the lease cancelled and both the lessor and the lessees ousted from occupancy holding. On appeal it was held by the District Judge that the suit was not properly speaking a civil suit at all ; and this being so, the Judge dealt with the appeal under section

207 of Act XII of 1881. Held that whether the suit was or was not of a civil nature, the Judge was right in applying section 207 of Act XII of 1881. (*Janki* v. *Baldeo Singh*, W. N. 1891, p. 191). A co-sharer in a village, who was also lambadar, mortgaged and leased his share to one Fasahat-un-nisa, who got possession and collected the rents and profits. Another co-sharer in the village sued Fasahat-un-nissa and her transferor in a court of Revenue for her share of the profits collected by Fasahat-un nissa. The claim was in the main allowed, and an appeal was preferred to the District Judge. Held that whether the suit had been properly brought in a Court of Revenue or not, any defect as to Jurisdictiction was cured by sections 206 and 207 of Act XII of 1881 (*Kaniz Rasul* v. *Ashraf-un-nissa*, W. N. 1902. p. 156).

Clause (2) :—

In a suit instituted in the court of an Assistant Collector, an objection was taken that the suit was not maintainable in the Revenue Court. On appeal, by the plaintiff, the Assistant Collector's decision was affirned. The appellate court had not before it the materials necessary for the determination of the suit. It was held under Act XII of 1881 that though the objection to the Jurisdiction was taken in the first court and repeated before the appellate court, the latter should only have *pro-tanto* entertained it for the purpose of determining as to what court it should direct its order of remand, and should not have passed an order, the effect of which was to maintain the dismissal of the suit (*Debi Saran Lal* v. *Debi Saran Upadhya*, W. N. 1884, p. 122 ; I. L. R. 6 All., 378). An Assistant Collector dismissed a suit without considering the merits, on the ground that it was not cognizable by a Revenue Court. On appeal, the District Judge held that it was unnecessary to determine the question of Jurisdiction as he had power in any event under section 208 of the N. W. P., Rent Act, to remand the suit to the Assistant Collector, and he remanded it accordingly. *Held* that the Judge had rightly construed section 208 of the Rent Act and that the remand was proper. (*Girwar Singh* v. *Sita Ram*, W. N. 1888, p. 282). Held that the application by an appellate court of the provisions of section 208 of Act XII of 1881 is not precluded by the fact that the court of first instance has dismissed the suit on a preliminary point without any trial of it on its merits (*Bholai Khan* v. *Abu Jafar*, W. N. 1899, p. 55).

Question of Proprietary Title in Revenue Court.

Procedure when tenant pleads plaintiff is not his landholder.

198. (1) When in any suit against a tenant under this Act, the defendant pleads that the relation of landholder and tenant does not exist between the plaintiff

and himself on the ground that he actually and in good faith pays the rent of his holding to some third person,

the question of such payment of the rent to such third person shall be inquired into, and if the question is decided in favour of the defendant, the suit shall be dismissed.

(2) The decision of the Court on such question shall not affect the right of any person entitled to the rent of the holding to establish his title by suit in the Civil Court.

This section corresponds to section. 148 of Act XII of 1881.

Object of the section :—The section was made for the protection of tenants who upon establishing a payment to a third person under the circumstances mentioned therein, must be held to have satisfactorily answered the lambardar's claim—*Madho Prasad* v. *Ambar* (I. L. R. 5 All ; 503). It also serves to protect tenants from the expense and hardship of being impleaded in suits when the real issue is a question between rival claimants of the proprietary right *Broke* v. *Sarupjeet* (1 N. W. P. H. C. R., January 1869, p. 30). The members of the Select Committee in their report printed at page 80 of the N. W. P. and Oudh Gazette, dated June, 22nd, 1901, Part V. observe :—"We think a distinction should be made between such questions as arise between the original parties to the suit and between the plaintiff and some third person. In a suit by a landholder against his alleged tenant if the latter pleads that he is really the tenant of some third person we think that the third person should not be allowed to come in as a party but that the suit should be decided merely on the question as to whom the tenant pays the rent of his holding, leaving it to the rival zamindars to fight their dispute out in the Civil Court, without making stalking-horses of the tenantry. If a person in order to establish his title were allowed to sue all the tenants and the rival Zamindars to come in as a party and the Revenue Court were permitted to refer the dispute as to proprietary title to the Civil Court, as we propose to authorize it to do in the case of such a dispute between the original parties to the suit, the result would be that the collections of rent in the whole village might be suspended for years while the rival Zamindars were litigating the cases up to the High Court, perhaps up to the Privy Council. As regards these

cases we prefer to fall back on the provisions of sec. 148, Act XII of 1881, but as that section, as it stands, is extremely obscure and has led to innumerable difficulties in its interpretation, we have redrafted it."

Nature of the enquiry under this section :—In cases under this section the issue will be : " whether the tenant actually and in good faith, pays the rent of his holding to some third person." The point for determination is not the respective proprietary rights of the plaintiff and the intervenor but only the actual *bona fide* receipt of rent up to the date of the commencement of the suit—*Mt. Thakoorayen Bhagmanee Koonwar* v. *Syud Furzund Ali* (1 Agra Rev. 20, H. C. R., 1886, R. C. A., p. 20). In any suit for rent against a tenant by a person claiming as landlord, the Court ought not to put on the record a person who prefers opposing claims to the plaintiff unless it sees that his position, as such opponent, would be seriously compromised by the result of a decree in favour of the plaintiff, *e.g.*, as when the opposing party claims to be in actual possession by receipt of rents (*Choolie Lall* v. *Kokil Singh*, 19 W. R 248). An intervenor in a suit for rent has no right to be made a defendant, or to introduce into the suit an entirely new issue *e. g.*, one concerning title between himself and the plaintiff still less is he entitled singly to appeal against the judgment in the case (*Biressur Panrey* v. *Jogendro Chunder Deb*, 24 W. R. 261) ; so where a person sued for rent sets up the title of a third party, and alleges that he holds under, and pays rent to him, such third party ought not to be made a party to the suit so as to convert a single suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed ; such a suit raises only two issues :—

(1) Does the relation of landlord and tenant exist between the plaintiff and defendant ?

(2) Are the alleged arrears of rent due and unpaid ?

And these are questions in which the plaintiff and defendant are alone concerned, and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues, (*Lodai Mollah* v. *Kally Dass Roy*, I. L R. 8 Calc. p. 238). c. f. also 24 W. R. 261 and 19 W. R. 248.

The question whether the parties to a suit in a Court of Revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of competent Court. Consequently, where a Court of Revenue determines in such a suit, that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in

such relation from suing in the Civil Court to establish such relation (*Gopal* v. *Uchabal* I. L. R. 3 All. p. 51).

'Actually and in good faith':—Payment by a tenant in good faith to the recorded proprietor absolves the tenant from liability to another claimant (*Kalla* v *Musammat Kishore Kuar*, S. D. B. R. No. 4 of 1885). But in a suit by the lambardr of a joint undivided mahal for rent the defence was that the tenant had paid the rent to a co-sharer. It appeared that the intention of the *wajibularz* was that rents should be collected by the lambardar. Held that this being so and the intention of the Legislature in passing the N.-W. P. Rent Act (XII of 1881) being that in a mahal of this kind the lambardar and not the co-sharer was the person to whom rent should be paid, the payment relied on did not relieve the tenant from his liability to the lambardar (*Ganga Sahai* v. *Ganga Baksh*, W. N. 1890, p. 3) *i.e.*, such payment is not a payment in good faith.

Burden of proof:—Under the old law it was provided that "such third person may be made a party to the suit" and therefore under the special wording of that law it was held that the *onus* of proving *bona fide* of such receipt was on the intervenor (*i. e.*, the third person to whom the rent was alleged to have been paid) *Bhyrub Chunder Chund* v. *Shaikh Khaleel*, 8 W. R., p. 493; *Woomesh Chund Dutt* v. *Bhugban Chunder Roy*, 9 W. R., p. 305; *Modhoo Soodun Bagchee* v. *Mohish Chunder Singh*, 12 W. R., p. 62; 3 B. L. R, A. C., 203; *Dayal Krishne Deb* v. *Kalinath Kur*, 1 B. L. R., S. N. 2. But the present law as laid down in the section under note does not require the third person to be made a party; only the question of payment to the third person shall be enquired into. It follows, therefore, that the burden of proving the fact and *bona fides* of such payment lies on the tenant (defendant).

Effect of a Civil Court decree already made:—A Collector is bound to consider a decree holder, who has executed a decree of a Civil Court confirming him in his title, to be in possession and to refuse to hear any application from a third party under sec. 77 Act X of 1859. But a *butwara* award is no absolute proof of title, and no estoppel in the way of an intervenor who can prove that he has received and enjoyed the rents claimed from a date subsequent to the *butwarah* (*Sreenath Ghossal* v. *Joy Narain Kavar*, 3 W, R. Act X. p. 11); Section 77, Act X of 1859 does not allow an intervenor to set up an allegation of receipt of rent against a recent declaration of title (*Umbika Churn Nag* v. *Shibasoondaree Debea*, 10 W. R. p. 320). It may be noted here that the above rulings were passed under the old law where the third person was made a party and the enquiry was directed

as to his *bonafide* receipt of rent. But now the question of *bonafide* payment shall be enquired into between the tenant and the landholder only without making the third person any party. Under such circumstances the question will be whether a tenant paying to a third person the decree of a Civil Court declaring the plaintiff's right to receive the rent notwithstanding, is making a *bonafide* payment. It has been held in re The *Nawab Nazim of Bengal* v. *Puddo Lochan Mundal*, (5 W. R. Act X. 26) that the finding of the court that the payment was made to a person who was not legally entitled to receive it, is not necessarily inconsistent with an actual and *bonafide* receipt of the rent so paid. But under the present law the enquiry being of *bonafide* payment and not of *bonafide* receipt, it appears that if a tenant having knowledge of the existence of such decree pays to a third person, such payment will not be a *bonafide* payment.

Application of the section :—This section applies only in cases where the relationship of landholder and tenant is not admitted by the defendant. This section differs from section 148 of Act XII of 1881 in this that under the provisions of the new Act only the question of payment to a third person shall be enquired into when in any suit against a tenant the defendant pleads that the relation of landlord and tenant does not exist between the plaintiff and himself. So where the plaintiffs sued their tenant, for arrears of rent, impleading their co-sharers under sec. 194 of the Tenancy Act, 1901, as they refused to join the plaintiff in the suit, and the tenant pleaded in answer that he had in good faith paid the rent to one of the co-sharers (defendants) who admitted such payment ; held that the defendant being admittedly a tenant of all the co-parcenery body to such a case sec. 198 of the new Act has no application, (*Nabuan Bibi* v. *Gya Dutt*, A. L. J. Vol. I, p. 707). This section would however not apply to cases where the tenant though denying the relationship of landlord and tenant between himself and the plaintiff sets up a proprietary title in himself. Such cases are governed by sec. 199.

It is to be noted that to make this section applicable the denial of the relation of landholder and tenant must be on the ground of actual payment in good faith to some third person. If the actual payment is not pleaded this section would not apply. So where in a suit for arrears of rent the tenant pleaded that the landlord plaintiff's right had been purchased by B, who had forbidden him to pay rent to plaintiff, it was *held* that the tenant not having pleaded actual payment of rent in good faith to B. section 198, Act II of 1901 (local), did not apply. (*Sheo Dehal Singh* v. *Badri Narain*, A. L. J., Vol. II. p. 71 (notes and comments).

Appeal :—A question may arise whether an appeal against a decision under this section lies on the ground that a question of proprietary title has been in issue in the court of first instance and is a question in the appeal. The heading of this Chapter "Conflict of jurisdiction and questions of title" and the sub-heading "Questions of Proprietary title in Revenue Courts" both point to the conclusion that some question of proprietary title is to be in issue in cases under this section and therefore an appeal on the ground aforesaid lies. But a careful perusal of the section clearly shows that there can be no question of proprietary title in issue, because the third person to whom payment is alleged to have been made is not required to be made a party and the enquiry is to be between the tenant and the landholder only between whom no question of proprietary title can arise under the circumstances. Under the old law the third person was allowed to come in and therefore there was some confusion. But the present law has made the point very clear. (vide report of the Select Commitee given under "object of section" and notes under "nature of the enquiry under this section").

Procedure when defendant pleads he is not a tenant.

199. (1) If in any suit or application filed in a Revenue Court against a person alleged to be the plaintiff's tenant the defendant pleads that he is not a tenant, but has a proprietary right in the land, and such question of title has not been already determined by a Court of competent jurisdiction, the Court may either—

(*a*) by order in writing, require the defendant to institute, within three months, a suit in the Civil Court for the determination of such question of title, or

(*b*) determine such question of title itself.

(2) When an order has been passed under clause (*a*) of sub-section (1), if the defendant fails to comply with it, the Court shall decide such question of title against him. If the defendant institutes the suit in compliance with the order, the Revenue Court shall dispose of the suit or application

pending before it in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be, upon such question of title.

(3) If the Revenue Court decides to determine such question of title itself, it shall follow the procedure laid down in the Code of Civil Procedure for the trial of suits, and, notwithstanding anything contained in section 193 of this Act, all the provisions of the said Code shall apply to the trial of such question of title.

This section corresponds to sec. 208 A of Act XII of 1881.

The members of the Select Commitee in their report printed at page 80 of the N. W. P. and O. Gazette, dated 22d June 1901, observe :—"For the determination of such question as between the original parties to the suit, whether it is a defendant who is sued as a tenant, but who alleges that he is not a tenant but has a proprietary right in the land, or a plaintiff in a suit under Chapter IX (B) (now chapter XI) whose name is not recorded and whose proprietary right is denied, we have provided that the Revenue Court may follow one or other of two courses—either decide the question itself, or refer the party to the Civil Court for a decision of the question by that Court. If the points involved are simple, the Revenue Court will presumably adopt the former procedure ; if difficult and complicated, the latter".

Res-Judicata :—When a Rent Court orders the ejectment of a tenant upon one of the grounds mentioned in sec. 58 of the N. W. P. Tenancy Act (II of 1901) deciding itself under section 199 of the Act, the question of title against him, he is barred, by the rule of *res Judicata* from re-opening the question of title in a Civil Court (*Salig Dube* v. *Deoki Dube*, A. L. J. Vol II. p, 334).

200. If any such question of title has been determined by a Revenue Court, and is a matter in issue in appeal in the Court of the District Judge or the High Court, and such Appellate Court has not before it all the materials necessary for the determination of such question of title, it may either—

Procedure in appeal in such case.

(*a*) remand the case to the Revenue Court, or

(*b*) frame issues with respect to such question of title, and refer them for trial to any subordinate Civil Court of competent jurisdiction.

This section is altogether new.

Procedure when plaintiff's title in suit under Chapter XI denied:

201. (1) If in any suit instituted under the provisions of Chapter XI the plaintiff is not recorded as having the proprietary right entitling him to institute such suit and the defendant pleads that the plaintiff has not such proprietary right, the Court shall proceed, *mutatis mutandis*, as directed in section 199 :

Provided that if the Court adopts the procedure allowed by clause (*a*) of sub-section (1) of that section, the plaintiff shall be the party required to institute a suit in the Civil Court.

(2) The provisions of section 200 shall apply, *mutatis mutandis*, to any appeal in such suit.

(3) If the plaintiff is recorded as having such proprietary right, the Court shall presume that he has it ;

but nothing in this sub-section shall affect the right of any person to establish by suit in the Civil Court that the plaintiff has not such proprietary right.

This section is altogether new.

Clause (1) :—Vide report of the Select Committee given under section 199.

Clause (3) :—The members of the Select Committee in their report printed at page 80 of the N. W. P. and O. Gazette, dated 22nd June 1901, observe :—"If in a suit under Chapter IX (B) [now Chapter XI] the plaintiff's name is recorded as proprietor, we think the Revenue

Court should accept that as sufficient proof of his title in the suit before it. The person disputing it will have the Civil Court open to him".

Plaintiff, a recorded co-sharer, sued defendant lambardar for profits. The defence was that the plaintiff had never been in possession or receipt of profits within 12 years next prior to the suit. *Held*, that the plaintiff being a recorded co-sharer, the Court was bound to presume under clause 3 of section 201 of the N. W. P. Tenancy Act that the plaintiff was entitled to sue, though the defendant might sue the plaintiff in a Civil Court for a declaration that the latter had lost all right [*Niaz Ali Khan* v. *Sahu Gobind*, A. L. J. Vol II p. 237 (notes and comments)].

Questions of Tenant Right in Civil Court.

When Civil Court to refer party to Revenue Court.

202. (1) If in any suit relating to an agricultural holding instituted in a Civil Court the defendant pleads that he holds such land as the tenant of the plaintiff, or of a person in possession holding from the plaintiff, the Civil Court shall, by order in writing, require the defendant to institute, within three months a suit in the Revenue Court for the determination of such question.

(2) If the defendant fails to comply with the order, the Court shall decide such question against him. If the defendant institutes the suit in compliance with the order, the Civil Court shall dispose of the suit pending before it in accordance with the final decision of the Revenue Court of first instance or appeal, as the case may be, upon such question.

This section is altogether new.

The members of the Select Committee in their report printed at page 81 of the N. W. P. and O. Gazette, dated 22nd June, 1901, say :—

"One more point requires to be dealt with—what is to be done when a question of tenant's right arises in the Civil Court ?

The way in which this problem may present itself is best explained by quoting Mr. Justice Aikman's remarks on section 180 of the Bill. He says :—

'On 1st April 1902 a landholder sues Ram Baksh in the Civil Court to

have him ejected as a trespasser. On the same day Ram Baksh files a suit in the Revenue Court against the landholder under section 103 (*a*) [now section 99 A] of the new Act for the determination of the class to which he belongs. The Revenue Court decides that he is a tenant with right of occupancy. What will happen in such a case?

I think the only solution of the difficulty is to enact that *all* questions as to *tenant* right to an agricultural holding should be for the Revenue Court. If the pleadings in any civil suit raise such a question, it should be referred to, or the parties should be given an opportunity of having it decided by the Revenue Court. In the case just put, suppose Ram Baksh, in answer to the suit against him in the Civil Court, pleads that he is not a trespasser but a tenant of the plaintiff, the Civil Court should I think, be bound to stay proceedings for a reasonable time to give the defendant the opportunity of getting a decision of the Revenue Court on his plea of tenancy. If the Revenue Court decides that he is a tenant, the suit to eject him as a trespasser should be forthwith dismissed.

We have drafted section 203 H (now section 202) to meet such cases but where the defendant pleads that he is the tenant of some third party not holding from the plaintiff, that will be a case of rival Zamindars, and we think it should be left to the Civil Court, the third person will presumably intervene in the case and look after his own interest".

Procedure :—Plaintiffs sued for declaration that defendants not having shared in the cultivation with a deceased tenant were not entitled to the holding. Defendants pleaded *inter alia* that the Civil Court had no jurisdiction to entertain the suit. The munsiff overruled the plea, and dismissed the suit upon the merits. The lower appellate Court held that the suit was not cognizable by the munsiff, and ordered the plaint to be returned for presentation to the proper Court. *Held*, the Court of first appeal ought to have instructed the Court of first instance to take the course prescribed by section 202 of Act II of 1901, which provides that it is the defendant's duty to file a suit in a Revenue Court when he infringes the Jurisdiction of a Civil Court (*Madari* v. *Kabirun-nissa*, A. L. J. Vol. I p. 212; W. N. 1904, p. 114; Rev. L. J. Vol. I. p. 108). Where in contravention of the provisions of section 202 of the N. W. P. Tenancy Act, 1901, a civil court heard and determined a suit in which a question of tenant right was raised, and on appeal the lower appellate court remanded the suit under section 562 of the Code of Civil Procedure, it was held that the lower appellate court ought not to have remanded the case, but should itself have passed the order required by section 202 of the Tenancy Act, and the High Court made such an order (*Jagan Nath* v. *Bhawani*, W. N. 1904, p. 203). Where a Civil appellate court finds that the Court of original jurisdiction ought to have passed an order

under section 202 of the Agra Tenancy Act 1901, but has not done so, the proper course to be adopted by the Appellate court is not to remand the case under section 562 of the Code of Civil Procedure, but to send the case back to the original court with directions to pass the order which it should have passed in the first instace (*Mare* v. *Gauri Sahai*, W. N. 1905. p. 46). In a suit for redemption of usufructuary mortgage of an occupancy holding brought by the Zemindar the defendants pleaded (inter alia) that they were tenants of the plaintiff. The courts below dismissed the suit. Neither party relied on section 202 of Act No. II of 1901 in the Courts below nor before the High Court in second appeal. The provisions of that section were apparently overlooked throughout. Aikman J., after looking at the pleadings, *held* that the High Court in second appeal should do what the court of first instance ought to have done, and passed an order directing the defendants to bring a suit in the Revenue Court for proving their tenancy within three months [*Durga Prasad* v. *Nathu*, A. L. J. vol. II. p. 109 (notes and comments)].

'The defendant':—Under this section the court must order the defendant to institute a suit in the Revenue Court. So, where the effect of a Civil Appellate Court's order is that the plaintiffs should institute such suit it was held that the order was erroneous. See *Madari* v. *Kaberunnissa* (W. N. 1904, p. 114).

CHAPTER XV.

POWER TO MAKE RULES.

Power of Local Government to make rules.

203. The Local Government may after previous publication, make rules consistent with this Act—

(*a*) for the guidance of officers in the determination, enhancement, and abatement of rent;

(*b*) for the guidance of officers under section 52;

(*c*) as to the attestation of leases, counterparts or agreements under section 97;

(*d*) as to the dates on which instalments of rent shall fall due and profits shall be divisible;

(*e*) as to the fees payable under this Act;

(*f*) as to the procedure to be followed in applications under this Act;

(*g*) as to the transfer of cases by Revenue Courts; and

(*h*) generally for giving effect to the provisions of this Act.

All such rules shall be published in the Gazette, and on such publication shall have effect as if enacted in this Act.

Power of Board to make rules.

204. The Board, with the previous, sanction of the Local Government, and after previous publication, may, from time to time, make rules consistent with this Act and with the rules (if any) made thereunder by the Local Government for the guidance of all persons in matters connected with the enforcement of this Act.

THE FIRST SCHEDULE.

(*See section* 1.)

AREAS EXCEPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I.—The Kumaun Division, consisting of the districts of Naini Tal, Almora and Garhwal.

II.—The portion of the Mirzapur district lying to the south of the Kaimur Range.

III.—The family Domains of the Maharaja of Benares comprising the following parganas :—

Bhadohi and Khera Mangror in the Mirzapur district ; and

Kaswar Rája in the Benares district.

IV.—The tract of country known as Jaunsár-Báwar in the Dehra Dún district.

THE SECOND SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal.
XII of 1881	The North-Western Provinces Rent Act 1881.	The whole.
XIV of 1886	The North-Western Provinces Rent Act, 1886.	The whole.
IX of 1887	The Provincial Small Cause Courts Act, 1887.	So much of the first Schedule as relates to Act XII of 1881.
VI of 1888	The Debtors Act, 1888,	Section 10, sub-section (2).
XX of 1890	The North-Western Provinces and Oudh Act, 1890.	Section 63, in so far as it relates to Act XII of 1881.
XII of 1891	The Repealing and Amending Act, 1891.	So much of Part I of the first Schedule as relates to Act XIV of 1886.

THE THIRD SCHEDULE.

FORM OF LEASE OR COUNTERPART.

(*See section 96*)

I, $\frac{\text{A. B.}}{\text{F. G.}}$ son of $\frac{\text{C. D.}}{\text{H. I.}}$, resident of $\frac{\text{E.}}{\text{J.}}$, have $\frac{\text{Leased}}{\text{taken on lease}}$ the undermentioned land $\frac{\text{to F. G.}}{\text{from A. B.}}$ son of $\frac{\text{H. I.}}{\text{C. D.}}$, resident of $\frac{\text{J.}}{\text{E.}}$ in mahál K. of mauzah L. :

(Here adequately describe the holding.)

at an annual rent of Rs. ( ), payable in the following instalments and on the following dates, namely,—

( ) Rs. on the ( ) day of ( )
( ) Rs. on the ( ) day of ( )
( ) Rs. on the ( ) day of ( )
( ) Rs. on the ( ) day of ( )

the period of the lease being for ( ) years, that is to say, from (date) to (date)

Dated the ( ) day of ( ), 19 .

{Signed or marked.} A. B., landholder.
F. G., tenant.

(Witness, if marked) M. N.

THE FOURTH SCHEDULE.

(See sections 167, 169, 170, 171, 172.)

GROUP (A)—SUITS.

[*Suits triable, when not exceeding Rs.* 100 *in value, by Assistant Collector of 2nd class—appeal to Collector ; when exceeding Rs.* 100 *in value, by Assistant Collector of* 1st *class—appeal to Civil Court.*]

Serial number.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fee.
1	76	For an adjudication as to the price of crops or other products which the landholder has elected to purchase under section 75.	Fifteen days ..	When the ejectment takes effect.	As in the Court-fees Act, 1870.
2	102	For arrears of rent, or where rent is paid in kind for the money equivalent of such rent.	Three years ..	When the arrears become due.	Ditto.
3	110	For compensation for refusing to deliver receipt for rent paid, or to credit the rent paid as requested by the tenant.	Three months ..	The date of the refusal ..	Ditto.
4	142	To contest a distraint	As in section 142.	As in section 142 ..	Ditto.
5	145	To recover compensation for distraint and sale of property.	Three months ..	The date on which the sale takes place.	Ditto.
6	146	For compensation for wrongful acts of distrainer.	Ditto ..	The date on which the right to sue accrues.	Ditto.

7	147 (2)	For recovery of the amount realised from a sub-tenant by proceedings in distraint.	Ditto ..	The date of realisation ..	Ditto.
8	159	By a lambardar to recover from a co-sharer arrears of revenue, village-expenses, and other dues.	Three years ..	When the arrears become due.	Ditto.
9	160	By a co-sharer to recover from a co-sharer who defaults arrears of revenue paid by the plaintiff on account of the defendant.	Ditto ..	When the arrears are paid. ..	Ditto.
10	161	By a muafidar or assignee of revenue for arrears of revenue due to him as such.	Ditto ..	When the arrears become due.	Ditto.
11	162	By a taluqdar or other superior proprietor for arrears of revenue or rent due to him as such.	Ditto ..	Ditto. ..	Ditto.

THE FOURTH SCHEDULE—(*continued*).

GROUP (B)—SUITS.

[*Suits triable by Assistant Collector of* 1*st class in which appeal (if any) lies to Civil Court.*]

Serial number.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fee.
12	36	For compensation for rent or produce exacted in excess of rent lawfully payable.	Three months ..	The date of the exaction ..	As in the Court-fees Act, 1870.
13	63	For the ejectment of a tenant on the ground specified in clause (*b*) or (*c*) of section 57.	One year ..	When the forfeiture is incurred, or the condition is broken.	Ditto.
14	65	For an injunction, or for the repairs of damage or waste or for compensation.	Ditto ..	When the damage is done, or the waste begins, or the condition is broken.	Ditto.
15	103	For compensation for extortion of payment of rent.	Ditto ..	The date of the extortion .	Ditto.
16	164	By a co-sharer against a lambardar for his share of the profits of a mahal, or of any part thereof.	Three years ..	When the share of the profits becomes payable.	Ditto.
17	165	By a co-sharer against a co-sharer for a settlement of accounts and his share of the profits of a mahal, or of any part thereof.	Ditto ..	Ditto ..	Ditto.

THE FOURTH SCHEDULE—(*continued*).

GROUP (C)—SUITS.

[*Suits triable by Assistant Collector of* 1*st class in which appeal lies to Revenue Court.*]

Serial number.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fee.
18	31(2)	For the cancellation of an illegal sub-lease or other transfer, or for the ejectment of the tenant and the sub-lessee or other transferee, or both.	One year ..	The date on which the illegal sub-lease or other transfer was made.	As in the Court-fees Act, 1870.
19	31(3)	For the cancellation of an illegal agreement to sub-let or otherwise transfer.	Ditto ..	When the illegal agreement becomes known to the plaintiff.	Ditto.
20	40(1)	For the enhancement of the rent of a fixed-rate tenant.	None ..	None	Ditto.
21	40(2)	For the abatement of the rent of a fixed-rate tenant.	Ditto ..	Ditto	Ditto.
22	42(1)	For the enhancement of the rent of an expropriatary tenant.	Ditto ..	Ditto	Ditto.
23	42(2)	For the abatement of the rent of an expropriatary tenant.	Ditto ..	Ditto	Ditto.
24	43(1)	For the enhancement of the rent of an occupancy tenant.	Ditto ..	Ditto	Ditto.

THE FOURTH SCHEDULE—(*continued*).

GROUP (C)—SUITS—(*concluded*).

[*Suits triable by Assistant Collector of* 1*st class in which appeal lies to Revenue Court.*]

Serial number.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Proper court-fee.
25	43(2)	For the abatement of the rent of an occupancy tenant.	None ..	None	As in the Court-fees Act, 1870.
26	48	For the enhancement of the rent of a non-occupancy tenant.	Ditto ..	Ditto	The same as in the case of an occupancy tenant under the Court-fees Act, 1870.
27	48	For the abatement of the rent of a non-occupancy tenant.	Ditto ..	Ditto	As in the Court-fees Act, 1870.
28	49	For the avoidance of a lease for period exceeding term of landholder's engagement with the Local Government.	Ditto ..	When the term of landholder's engagement expires.	According to the amount of the rent payable under the lease.
29	63	For the ejectment of a non-occupancy tenant on the grounds specified in section 58.	Ditto ..	None	According to the amount of the rent payable by the tenant.

30	79	For the recovery of the possession of a holding, or for compensation, or both.	Six months ..	When the wrongful dispossession takes place	As in the Court-fees Act, 1870.
31	79	For compensation for an improvement brought after a suit for recovery of possession has failed as regards reinstatement of the tenant.	Three months ..	The date of the decree refusing reinstatement of the tenant.	According to the amount of the rent payable by the tenant.
32	80	For compensation for ejectment under a decree or order subsequently reversed.	Six months ..	The date on which the decree or order is reversed.	As in the Court-fees Act 1870.
33	86	To set aside a notice of surrender ..	Fifteen days, ..	The date of the receipt or service of the notice.	Eight annas.
34	95	For a declaration as to any matter specified in section 95.	None ..	None	Ditto.
35	96	For a lease or counterpart ..	Ditto ..	Ditto	As in the Court-fees Act, 1870.
36	150/154	For the resumption of a rent-free grant ..	As in section 154.	As in section 154	According to the annual letting value of the land as estimated by the plaintiff.
37	150/156	For the assessment to rent of a rent-free grant.	None ..	None	Ditto.
38	150/158	For the assessment to revenue of a rent-free grant.	Ditto ..	Ditto	Ditto.

THE FOURTH SCHEDULE—(*continued*).

GROUP (D)—APPLICATIONS.

Serial number.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Proper Court-fee.
39	59	For the ejectment of a tenant on the ground specified in clause (*a*) of section 57.	The period allowed for executing the decree.	Date of the final decree in the case.	Eight annas.
40	85	For the service of a notice of surrender under section 83 or 84.	As in section 85.	As in section 85 ..	*Nil.*
41	93	For permission to give compensation otherwise than by payment of money for an improvement made by a tenant.	As in section 93 (5)	As in section 93 (5) ..	As in the Court-fees Act, 1870.
42	94	For decision as to whether a work is an improvement, or as to right to make it.	None ..	None	Ditto.
43	105	For the deputation of an officer to make division, estimate, or appraisement of produce or crop.	Ditto ..	Ditto	Ditto.
44	111	For permission to deposit rent ..	Ditto ..	Ditto	Ditto.

45	117	For payment or refund of rent deposited under section 111.	Ditto ..	Ditto	Ditto.
46	126	For assistance to distrainer against resistance or apprehension of resistance.	Ditto ..	Ditto	Ditto.
47	..	For the execution of a money decree under this Act, or under any enactment repealed by this Act, not being a decree for a sum of money exceeding Rs. 500, inclusive of the costs of executing such decree, but exclusive of any interest which may have accrued after decree upon the sum decreed.	Three years ..	The date of the final decree in the case.	As in the Court-fees Act, 1870.
48	..	For the execution of such a decree when exceeding Rs. 500.	The period allowed for the execution of a decree of the Civil Court.	As in the case of a decree of the Civil Court.	Ditto.
49	..	For the execution of any decree other than a money decree.	One year ..	The date of the final decree in the case.	Ditto.
50	183 & 184	For a review of judgment	Ninety days ..	The date of the decree or order.	Ditto.
51	185	For revision - - - ..	None ..	None —	Ditto.

THE FOURTH SCHEDULE—(*continued*).

GROUP (E)—APPEALS.

(Appeals to Revenus Courts.)

Serial number.	Section. of Act	Description of appeal.	Perlod of limitation.	Time from which period begins to run.	Proper court-fee
52	..	To a Collector	Thirty days ..	The date of the decree or order appealed against.	As in the Court-fees Act, 1870.
53	..	To a Commissioner	Sixty days ..	Ditto ..	Ditto.
54	..	To the Board	Ninety days ..	Ditto ..	Ditto.

APPENDIX, A.

REGULATION VII OF 1828.

A regulation for amending the provisions of Regulation XV of 1795 and for defining the authority of the Raja of Beneras in the *mahals* therein referred to—Passed by the Governer-General in Council on the 12th September 1828.

Preamble

By an arrangement concluded in the year 1794 with *Raja Mahip Narian Singh*, the adminstration of Justice in the *Jagirs* of Bhurdai, Kera mangrore and that part of *Paragna* Kuswar or Gungapure, which is the Raja's family Zemindari, so far as relates to matters connected with the Revenue, was separately provided for, and in conformity thereto the courts of Justice were restricted by Regulation XV of 1795 from taking cognizance of any such cases ; the management of these *mahals* was committed to the Raja with a view to the maintenance of his honour and dignity, it was to be conducted in concert with and under the advice of Collector and with an appeal direct to the Governor-General in Cauncil ; an arrangement which was obviously extended to secure to the population the observance of the same principles of administration and the same recognition of rights by which the Government had engaged to adhere in its dealings with the rest of its subjects throughout the province.

Inconveniences however having been experienced from the absence of specific rules for the guidance of the Raja in the exercise of the privileges thus conferred upon him, and the system having in other respects failed to accomplish the objects intended by it ; the following provisions have been enacted, to be in force throughout the whole of the *mahals* in question from the date of their promulgation.

Clause sixth section 17, Regulation II, 1795 section, 8, Regulation V 1790 and Regulation XV 1795 modified.

II. Clause sixth section 17, Regulation II, 1795. Section 8, Regulation V, 1795 and Regulation XV, 1795 are hereby declared subject to the following modifications.

The Superintendence of Bhurdai and other *mahals* constituting the family domain of the Raja of Benares to be vested in such officer as the Government may appoint.

III. The superintendence of the *mahals* above mentioned shall be vested in such officers as the Governor-General in Council may from time to time by an order in council appoint.

IV. The administration of Justice in all matters connected with the revenue shall continue to be conducted through the agency of the Raja under the restrictions herein provided, but the reservation of the privilege shall not be understood as divesting the population of any of the rights and interests connected with the occupation, possession or transfer of land, whether by sale, gift or inheritance, or the produce of it, which immemorially belong to them and are enjoyed by similar classes throughout the rest of the province.

The administration of justice in matters connected with reference to be conducted through the agency of the Raja.

V. *First.* *No mufassal* or detailed settlement having been formed within the *mahals* in question by the authority of Government, the assessment of the land and the settlement of the several villages comprised in them shall be made through the channel of the Raja, who is to be guided in all matters relative thereto by the general rule in force within the Province of Benares applicable to such cases.

Proviso. A detailed Settlement of the lands to be made by the Raja under the general rule in force.

Second. In the selection of parties to engage, those individuals shall be considered entitled to preference who, had a detailed settlement been extended to these *mahals* under the Regulation of 1795, would have been recognized as Zemindars. Such individuals shall be recorded under the designation of *Rais*, and the tenures so belonging to them shall be considered heritable and transferable, snbject to the conditions in regard to the payment of *Jama* assessed upon them for which they may be admitted to engagements. When there may be a *raes* entitled to claim admission or where the latter may refuse to engage on just terms, the settlement shall be made for a fixed period with farmers, unless the Raja should prefer making a *raiyatwari* settlement and collecting the public dues through his own officers immediately from the raiyats.

Rules for selecting the parties to be admitted to engage for the payment of the revenue.

Third. The assessment of all lands not entitled to be considered rent-free under the rules contained in Regulation XVI, 1795 shall be fixed with reference to their produce and capability as ascertained at the time when the provision of the settlement may be made. But the assessment shall not be raised above the amount heretofore paid, unless it shall clearly appear that the nett profits derived from the land by those who may be entitled to share in them would under the usage of the Province and the rules applicable to such cases authorize the increase demanded :

Rules for fixing the assessment of *malguzari* lands.

Fourth. In admitting particular parties to engagements such parties shrll not be considered as invested with any rights over their co-sharers or undertenants not previously possessed by them, excepting in so far as may be authorised by the Regulations for realizing the public revenue. All questions therefore between pattidars ands harers inheriting and claiming to inherit joint or distinct portions of a tenure or the produce thereof shall notwithstanding such admission be considered open to adjustment on the principles observed in similar cases throughout the province, and all questions regarding the right to possession of *khudkast and chapparband raeyats* shall be adjusted on the same principles.

Admission to engagements not to affect the rights or interests of co-sharers or other tenants excepting in so far as may be specially authorized.

Fifth. It shall be the duty of the Raja on occasion of making or revising settlements of land revenue in any of the *mahals* referred in Regulation XV, 1795 to unite with the adjustment of the assessment and the investigation of the extent and produce of the lands the object of ascertaining and recording all meterial points connected with rights, interests and privileges of the various classes of his tenantry. His proceedings therefore shall embrace the formation of as accurate a record as possible of all persons found in possession of the soil with a specification of the nature and extent of the interests respectively enjoyed by them. The record shall likewise specify the rates per *bigha* of each description of land or kind of produce in every distinct village. All *Lakhiraj* tenures shall at the same time be carefully registered with a detail of every particular connected therewith. The proceedings shall likewise contain the names of the *patwaris* and the village watchmen with a statement of the amount and nature of the allowance assigned to each.

Points to be ascertained & recorded on the occasion of making or revising settlements.

And *lakhiraj* tenures to be registered with details of particulars.

Sixth. In cases where two or more persons may possess a joint property in any mahal or in the rent or produce thereof or in cases where such property may be separately possessed by parties subject to common obligations, it shall be competent to the Raja either to make a joint settlement with the parties collectively or with a paortion of them selected to undertake the management as village *malguzars*, due regard being paid to the wishes of the coparceners who until regularly separated shall continue to hold their lands as subordinate proprietors, subject to the payment of rent or revenue at the rates and In

Rules for the estates held in joint property.

the mode, heretofore in use or otherwise provided for by the Regulations for the Province of Benares.

Seventh. When parties enter into engagements, who do not possess the entire proprietary right; but may be elected as managers by the coparcenary in general, the non-engaging parceners shall not be held answerable for the default of those individuals, save and except the portion of rent or revenue demandable from them respectively. The rights and interests distinct or common of the *pattidars* or sharers shall not be prejudiced in other respects by such engagements and all disputes between the said sharers and the engaging proprietors shall be determined according to what shall be ascertained to be the respective rights of the parties agreeably to the principles of justice and the laws, customs and usages of the Province.

Responsibility of parties under engagements, and of the *patti dars* and sharers.

Disputes between them how to be determined.

VI. *First.* All proprietors of land in the Province of Benares being privileged to transfer to whomsoever they think proper by sale, gift, mortgage or otherwise their proprietary right in the whole or any portion of their respective estates, provided that such transfer be conformable to the Hindu or Mahomedan laws according to the religious persuasion of the parties and to the Regulation in force. It is hereby declared that all such assignments within the tracts, to which this enactment refers, shall be held equally valid, subject to the conditions in regard to leases and the allotment of *Jama* prescribed by the Regulations, provided always that the same be duly notified to the Raja; otherwise the consequences of omitting to make such notification on similar occasions to the Collector will in like manner attach to all such transfers; the rules and restrictions applicable to Collectors being also applied to the Raja subject to the orders of the Superintendent, who shall in this behalf possess and exercise the powers and authority of the Board of Revenue.

Proprietary righs in the land may be transferred by sale, gift mortgage or otherwise.

The same to be duly notified to the Raja.

Second. In all cases either of transfer or inheritance the Raja on application being made for the purpose, shall proceed to record the mutation and shall take such other steps for securing the rights and interests both of the public and of individuals as the Collectors are required to do on similar occasions in the Benares Province.

In cases of transfer or inheritance, the Raja to record the mutation, on application, and to proceed as the Collectors are required to do.

VII. The decision of the Raja or his officers on all points connected with the foregoing provisions shall undergo the revision of the Superintendent, to whom the whole of the proceedings on the settlement or transfer of any estate shall be certified, and who after calling for such further information as may appear necessary shall confirm, modify or annul the same as he thinks proper; and the orders thus passed by the Superintendent shall be final unless altered or set aside by the Governor-General in council.

The decision of the Raja on the foregoing provisions subject to revision by the Superintendent whose orders to be final unless set aside by Government.

VIII. The following rules are prescribed for the guidance of the Raja and his officers in realizing the public revenue.

Rules for realizing the public revenue.

IX. The Regulations at present in force within the Province of Benares for enabling proprietors and farmers of land to realize their rents with punctuality, for prescribing the process by which the Revenue Authorities are to collect the Revenue payable to Government from the lands, for the imprisonment of defaulters and for securing the ultimate recovery of arrears by a sale of the landed property from which it may be due, are hereby extended, as far as they may be applicable, to the tracts referred to in Regulation XV, 1795.

The regulations in force at Benares, for realizing the public revenues extended to tracts referred to in Regulation XV 1795.

X. Exclusive of the powers vested in the Raja as *Zemindar*, by which he may distrain and bring to sale in the mode prescribed by the Regulations the personal property of *under Zemindars*, farmers, *raiyats* or other description of landholders for arrears of rent or revenue, he is hereby moreover authorised as far as regards the collection of the same to exercise the powers of a collector as defined in the Regulations within the tracts in question, subject to such restrictions and responsibility as may be now or hereafter imposed by this or any future enactment.

The Raja authorized to exercise the powers of a Collector as far as regards the collection of the revenues, exclusive of the powers vested in him as Zemindar.

XI. Whenever it may be necessary to resort to the sale of lands for the recovery of arrears of revenue, or whenever a sale of lands may be required in satisfaction of the decrees of the Courts of Judicature, the sale shall be held in the presence of the Raja or his deputy either in the public *Kachari* or such other open or convenient place within the *paragna* to which the lands belong,

Sale of lands for arrears of revenue, or under decrees of courts, to be held in the presence of Raja or his deputy, and the rules of Regulation XI, 1822, to be observed in such cases.

as may be specified in the advertisement, and the course of proceeding directed in regard to sales by Regulation XI, 1822, shall be considered applicable, and validity of such sales held contingent on the fulfilment of the several conditions therein specified.

The powers exercised by the Board of Revenue in regard to sales of land and collection of revenue vested in the superintendent, and the Raja to stand in the same relation towards that officer; as Collectors are towards the Board.

XII. The whole of the powers which are exercised by the Board of Revenue over the Collectors in regard to sales of land, as well as in all matters relative to the collection of public revenue are hereby vested in the Superintendent; and the Raja shall consider himself in the exercise of the privileges with which he is entrusted as standing in the same relation towards that officer as Collectors at present stand towards the Board.

From the orders of the Superintendent, an appeal to lie to Government. Civil Courts prohibited from taking cognizance of complaints relating to lands.

XIII. From the orders of the Superintendent in all such cases there shall be no appeal but to the Governor-General in council, and the Civil Courts are not competent to take cognizance of any complaint from any party whatsoever, contesting the validity of a sale, or claiming rights or interests connected with land or the rents thereof within the tracts in question.

Complaints against the Raja and his officers for breach of these rules to lie to the Superintendent.

XIV. All complaints of a breach of the rules herein prescribed for the guidance of the Raja and his officers in the exercise of the powers thereby entrusted to them or of unnecessary severity in the execution of them are declared cognizable by the Superintendent, who shall cause substantial justice to be rendered to the parties in the same manner as would have been done under the Regulations, had such complaints been cognizable by the Regular Courts; provided only that, when the offence alleged would authorize a criminal prosecution, the complaints shall be referred to the Magistrate, who will proceed to the decision thereof under the Regulations in the same manner as if it had been originally preferred to him.

If offence alleged to be of a criminal nature the complaint to be referred to the Magistrate.

Certain offence to enforce payment of arrears of rent strictly prohibited, and to subject the offender to prosecution before the criminal court.

XV. Torture, personal violence and every description of corporal punishment to enforce the payments of arrears of rent and of revenue within the tract in question are hereby strictly prohibited, and any one offending against this prohibition shall on the complaint of a person so punished be liable to prosecution before the criminal courts, and shall be dealt with on conviction as the Regulations require in such cases.

XVI. In order to secure for the inhabitants of these *Mahals* the administration of Civil Justice on the principle in force throughout the rest of the province a Native Commissoner shall be maintained by the Raja in each of the *parganas* refered to in Regulation XV, 1795 for the purpose of taking cognizance in the first instance of the revenue causes hereafter specified.

A native commissioner to be maintained by the Raja in each *Pargana* to take cognizance of revenue causes.

XVII. The nomination of individuals to the office of the Native Commissioner will be made by the Raja, but previous to such appointment taking effect he shall communicate what information he may have obtained regarding the age, character and past employment of the individuals in question to the Superintendent, who shall withhold his concurrence in cases of notorious bad character or incapacity, having regard however as far as possible in the mode of doing so to the Raja's honor and dignity.

The nomination of the individuals will be made by the Raja, but the confirmation to rest with the Superintendent.

XVIII. No Native Commissoner appointed under this Regulation shall be removed from office without sufficient cause, and in all cases of removal the Raja shall act in concert with and by the advice of the Superintendent.

The native Commissoner not to be removed from office, and the Raja to act in cases of removal in concert with and by the advice of the Superintendent.

XIX. The Native Commissioners shall be liable to a criminal prosecution for corruption, extortion or other gross misdemeanour and on conviction before the court of circuit shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case.

The native Commissoners liable to criminal prosecution for certain offences, and to fine and imprisonment on conviction.

XX. Persons invested with the powers of the Native Commissioner under this Regulation are authorized to receive, try and determine all suits preferred to them against any inhabitant of their respective jurisdictions relative to land of every description, or the rent, revenue or produce thereof, situated therein ; provided the cause of action shall have arisen within the period of twelve years previously to the institution of suits.

Powers and authority of the native Commissioner.

XXI. In receiving, trying and determining such cases the Native Commissioners shall be guided by the rules contained in Regulation XXIII, 1814 and in points not expressly provided for in that Regulation they shall observe as nearly as may be practicable the rules

Rules for the guidance of the native Commissioners.

prescribed for the guidance of the *Zellah* and city courts in the trial and decision of civil suits.

XXII. The rule which prohibits native Judicial Officers from taking cognizance of cases in which a British Subject or a European foreigner or an American may be a party, shall not be held applicable to the Native Commissioners appointed under the Regulation.

Exception.

XXIII. The decision of the Native Commissioners shall be executed by themselves, under the rules prescribed in the general Regulation for the execution of decrees; provided however that, if the case be appealed, the commissioner shall be guided by such instructions relative thereto, as he may receive from the Superintendent.

Native Commissioners to execute their decisions, subject, in cases of appeal, to instructions of the Superintendent.

XXIV. The proceedings of the Native Commissioners shall be subject to the revision of the Superintendent who in the event of an appeal being preferred to him within the period of six months from the date of any such decision will call for the papers and after directing such further investigation to be held as he may judge necessary, will confirm, modify or annul the order or decision of the Native Commissioner, as may appear proper; provided always that it shall be competent to the Governor-General in Council to supercede the order of the Superintendent, on being referred to by either party for that purpose.

The poceedings of the Native Commissioners subject to revision by Superintendent in cases appealed within six months. Government empowered to supersede the order of the Superintendent, if referred to.

XXV. The penalties prescribed by the Regulation for resistance of process in Revenue or Judicial matters are hereby declared applicable to all cases of the same nature arising out of the process provided for by this enactment.

Penalties for resistance of process declared applicable to cases under this Regulation.

XXVI. It is hereby further declared and enacted that, except when otherwise directed by the foregoing provisions, the Revenue and Judicial administration of the *mahals* herein referred to shall be regulated by the principles and spirit of the existing Regulations and, where those may not be applicable, by equity and good conscience.

The Revenue and Judicial administration of the *mahals* herein referred to, to be regulated according to the Regulations, except when otherwise directed by the Regulation.

APPENDIX B.

RULES UNDER THE N.-W. P. TENANCY ACT.

1.—Rules by the Local Government under the N.-W. P. Tenancy Act, 1901.

A.—ENHANCEMENT OF RENT.†

§ 1. Written statement of exemplar holdings te be filed.

1.—Upon the admission of the plaint in a suit for enhancement of rent on the ground that the rent paid is below prevailing rates (or rates generally payable), the Court shall (unless such written statement has been filed with the plaint) require a written statement to be filed by the plaintiff under section 112 of the Civil Procedure Code giving particulars of the holdings or fields of similar quality and with similar advantages the rents of which the plaintiff alleges justify the enhancement of rent claimed by him in respect of the holding or holdings to which the suit relates.

§§ 2, 3. Local inquiry to be made as to prevailing rates or rates generally payable.

2.—Before deciding an issue as to the amount or rate of rent which, regard being had to prevailing rates (or rates generally payable), should be decreed as the rent or rate of rent to be paid on account of any holding, a Court of original jurisdiction shall ordinarily itself make a local inquiry.

3.—Where the Court, for reasons to be recorded, directs such inquiry to be made by any other officer, its order shall not be addressed to any officer inferior in rank to a Tahsildar.

§ 4. Scope of such inquiry.

4.—In any such inquiry regard shall be had not merely to the holdings or fields specified in the written statement filed by the plaintiff, but to such other holdings or fields as may enable the Court to come to a correct finding upon the issue before it.

§ 5. Record of such inquiry.

5.—The results of every such inquiry shall be recorded in such detail as the circumstances of the case may require.

† Notification No. $\frac{1099}{I-336F}$, dated 15th April 1902 : Gazette of 19th April 1902, page 252.

§§ 6—11. Rules for examination and treatment of rentals.

6.—In many places it is the practice for the rent of a holding to be recorded in the form of rents distributed over each of the component fields. Such recorded distributions may be accepted for the purpose of determining the rates paid unless upon local inquiry they are shown to be clearly unreal or erroneous.

7. Where any such distribution is not accepted, or where the rent of any holding is recorded as payable in a lump sum on account of fields of various qualities and with various advantages, the Court shall distribute the rent over the component fields of the holding in order to determine the rate which is paid on account of each field or each group of fields of similar quality and with similar advantages.

8. Such distribution may be made by valuing the component fields at the Settlement Officer's standard rates and distributing the present rental upon such fields in the same proportion as the valuations thus arrived at bear to the total of such valuations, or in such other manner as may be best suited to the circumstances of the case.

9. In determining what is the prevailing rate for any description of land all abnormal rentals shall be disregarded.

10. Where the fields with which comparison is made differ from the fields which are the subject of the suit either as being in some point or points superior or inferior to such fields, due allowance for such difference shall be made before determining the rate to be applied for the valuation of any such fields.

11. Every field, or every group of fields of similar qualities and with similar advantages to which the suit relates shall be examined and the proper rent of every such field or group shall be determined by the Court :

Provided that where allowance has to be made under the preceding rule, or on account of caste, or otherwise, such allowance may be made by an adjustment of the total rent payable in respect of the holding, or where the suit relates to more than one holding to each of the holdings to which the suit relates :

Provided also that the rent to be decreed shall be the rent to be paid in respect of the entire holding.

Attestation of leases, &c.*

1. Where, in any case pending before a Revenue Court, a compromise is arrived at providing for the rent to be paid in respect of a holding or the period for which a holding is to be held, and an agreement is filed embodying the terms of the compromise, the Court shall, provided that the agreement is properly stamped, is for a term not exceeding ten years and stipulates for rent not exceeding Rs. 100 annually, attest the same, and take such steps as may be necessary to have the same recorded in the patwari's papers.

1-2. Attestation of leases by Courts.

2. Except as above provided, no Revenue Court shall ordinarily attest a lease or agreement unless the parties thereto appear before it, accompanied by the patwári within whose circle the land which is the subject of the lease or agreement is situate, and present an application in writing for the attestation thereof.

Dates for instalments of rents.†

§ 1. Dates of instalments of rent.

1.—The dates on which instalments of rent shall fall due shall be—

(*a*) if the dates have been agreed on by the parties to the tenancy, the dates so agreed on;

(*b*) if the dates have been determined and recorded by a Settlement Officer, the dates so determined and recorded;

(*c*) in other cases,—for non-occupancy tenants 30 days before the dates appointed for the payment of the instalments of the land revenue of the mahál; and for all other tenants, 21 days before the dates so appointed;

§ 2. Dates for division of profits.

2.—The dates on which profits shall be divisible shall be—

(*a*) if the dates have been agreed on by the persons concerned, the dates so agreed on;

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*Notification No. $\frac{1495}{1-203F}$, dated 19th May 1902: Gazette dated 24th May 1902, page 337.

†Notification No. $\frac{1066}{1-373F}$, dated 12th April 1902: Gazette of 19th April 1902, page 250.

(*b*) if the dates have been determined and recorded by a Settlement Officer, the dates so determined and recorded;

(*c*) in other cases,—where profits are divided with the crop,—the Ist February and the Ist August (the sugarcane *kist* where there is one being included with the *rabi*); where profits are divided annually, the Ist August.

Distraint proceedings.*

1.—The kurk amin shall be the sale officer for the purposes of Chapter IX of the Act:

Provided that the power of a sale officer to receive applications and fees for the sale of distrained property may be exercised by the officer in charge of the headquarters office of the tahsil whenever the kurk amin is absent therefrom. All applications so received shall be transmitted to the sale officer.

2.—No fees shall be levied in respect of any application made to a sale officer under Chapter IX of the act.

3.—The fee to be paid under section 130 for service of a notice shall be cash fee of one rupee in every case.

4.—No fee shall be levied in respect of any proclamation issued under section 131 of the Act.

5.—No fee shall be levied in respect of any notice and proclamation directed to be issued under section 140 of the Act.

Deposits of rent.†

§ 1. Fee to accompany application.

1.—The fee which under section 112(2) of the North-Western Provinces Tenancy Act, 1901, shall accompany an application under section 111 of that Act, shall be a fee of one rupee, levied in the form of a court fee stamp affixed to the application in addition to the fee proper for such application under the Court Fees Act, 1870.

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*Notification No. $\frac{1070}{1-419F}$, dated 12th April 1902: Gazette dated 19th April 1902, page 251.

†Notifieation No. $\frac{1101}{1-285F}$, dated 15th April 1902: Gazette dated 19th April 1902, page 251.

§ 2. Register of deposit to be maintained.

2.—A register shall be maintained by the Court, showing in respect of every sum deposited—

RECEIPT.

(1) The serial number of the deposit;
(2) the date of receipt thereof;
(3) the name, parentage, caste and residence of the depositor;
(4) the name, parentage, caste and residence of the person specified under section 112;
(5) the amount deposited;
(6) the date of payment into the Treasury.

PAYMENT.

(7) The serial number of the application for payment;
(8) the date of the application for payment;
(9) the date of the order for payment;
(10) the name, parentage, caste and residence of the person to whom payment is ordered;
(11) the amount ordered to be paid;
(12) the date of payment by the Treasury.

3-4. Procedures in connection with receipts.

3. Every deposit received by the Court shall be paid as soon as may be into the nearest Government Treasury, and a treasury receipt filed with the record of the case.

4. When the date of payment into the Treasury has been entered in the register, the Court shall sign the register in token of the correctness of the entries made therein in respect of the deposit.

5. Notices to be issued free of charge.

5. No fee shall be levied in respect of any notice issued under section 116.

6-11. Procedure in connection with payment.

6. When an order has been passed for the payment of a deposit, a voucher in the form prescribed by the Civil Account Code shall be handed to the person in whose favour the order for payment is made.

7. In every such voucher and in the counterfoil of every such voucher the amount to be paid shall be entered in figures by the Court with its own hand: and if the Court is acquainted with English the entries in the voucher and in the counterfoil thereof shall be made by or under the orders of the Court in English.

8. The number and date of the voucher shall be entered in the record of the application for payment.

9. If a voucher for payment is not presented within one month from the date on which it was drawn up, encashment of it shall be refused, and a fresh voucher must be obtained (*a*) upon surrender and cancellation of the original voucher, or (*b*) if the voucher has been lost, upon receipt by the Court of a certificate of non-payment thereof from the Treasury.

10. Every cancelled voucher shall be forwarded to the Treasury, and a note of the cancellation made on the counterfoil of the original voucher.

11. When an intimation of payment having been made is received from the Treasury the date of payment shall be entered in the register, and the Court shall sign the register in token of the correctness of the entries made therein in respect of the payment.

12. Check of register and Treasury returns.

12. Such comparison and adjustment of the entries in the register and in the Treasury returns shall be made as may from time to time be necessary.

Division, estimate or appraisement of land.*

1. The officer to be deputed under section 105 of the Act to make a division, estimate or appraisement, shall ordinarily be the kurk amin.

2.—The fee to be deposited with an application under section 105 of the Act shall be one rupee.

3.—The fee shall be paid by the Court into the Treasury, and the Treasury receipt therefor shall be filed with the record.

Remuneration of witnesses.†

I.—Save as hereinafter provided, travelling and other expenses shall be allowed on the following scale :—

(*a*) to witnesses of the class of cultivators, labourers, and menials, four annas a day;

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* Notification No. $\frac{1068}{1-375F}$, dated 12th April 1902 : Gazette of 19th April 1902, page 251.

†Notification No. $\frac{1062}{1-375F}$, dated 12th April 1902 : Gazette of 19th April 1902, page 250.

(*b*) to witnesses of a better class, such as zamíndárs, traders, pleaders, and persons of corresponding rank, from six annas to two rupees a day, as the Court may direct; and

(*c*) to witnesses of superior rank, including officers of Government in receipt of a salary of not less than two hundred rupees a month, from three to five rupees a day.

2.—If a witness be detained for a longer period than one day, the expenses of his detention shall be allowed at such rate, not usually exceeding that payable under the preceding rule, as may seem to the Court to be reasonable and proper.

3.—If a witness demand any sum in excess of what has been paid to him, such sum shall be allowed if he satisfy the Court that he has actually and necessarily incurred the additional expense.

ILLUSTRATION.

A post office employé shall be allowed the travelling and other expenses allowed to witnesses of the class or rank to which he belongs, together with the sum which, as certified by his official superior, he is liable to pay for the employment of a substitute entertained during his absence from duty.

4. The Court may, for reasons to be recorded in writing, allow expenses on higher scale than that hereinbefore prescribed.

Rules relating to proceedings in appeal, reference and revision.*

1. Memorandum of appeal to Board to be in English.

1. Every memorandum of appeal presented to the Board shall be in English.

Register of appeals.

2. There shall be maintained in every appellate Court a bound register of appeals presented and appeals admitted, showing the following particulars;—

(1) Serial number of the appeal.
(2) Date of presentation.
(3) Names of parties.
(4) Date of rejection.
(5) Date of admission.
(6) Date of dismissal for default or non-prosecution.

*Notification No. 2773/I—656 F dated the 17th September 1902, page 616, Gazette of 20th September 1902.

(7), (8), (9), (10) } Ex-parte cases... { Date of confirmation. / Date of modification. / Date of reversal. / Date of remand under sec. 562 C.P.C.

(11), (12), (13), (14) } Contested cases... { Date of confirmation. / Date of modification. / Date of reversal. / Date of remand under sec. 562 C.P.C.

(15) Whether objection filed under sec. 561, C. P. C.

(16) Remarks.

(17) Date of consignment to record room.

(18) Record-keeper's signature.

3—7. Rules for Courts making references to Board.

3. A report may be made by a Court to the Board under section 185 of the North-Western Provinces Tenancy Act, 1901, upon the application of a party to the case, or by the Court of its own motion.

4. An application to a Court to make a report under section 185 shall be made in the same manner as an appeal, and shall, as far as may be, be dealt with in the same manner as an appeal.

5. Before making a report of its own motion with regard to any judicial order, the Court shall issue a notice to the parties to the proceeding informing them of the grounds upon which it proposes to make the report, and fixing a date upon which any objections which they may have to urge will be considered and recorded.

6. (1) If, in any case, the Court decides to make a report, it shall submit the report with the record of its own proceedings to the Board, unaccompanied by the record of the Subordinate Court.

(2) If the Court making the report is not the Commissioner, it shall submit the report through the Commissioner.

7. If the Board upon a consideration of the report is of opinion that the order passed by the Subordinate Court should be varied, cancelled or reversed, it shall call for the record of such Court: but it shall not be incumbent upon it to cause a notice to be served upon, or to hear, the parties to the case.

8-9. Rules regarding revision by Board.

8. An application to the Board under rection 185 of the North Western Provinces Tenancy Act, 1901, for the revision of a judicial order passed by any Revenue Court other than a Commissioner, may be similarly rejected on the ground that the applicant has failed to apply, as it

was open to him to apply, to a Court subordinate to the Board to make a report under section 185 of that Act, or on the ground that he has failed to prefer an appeal to any such Court which it was open to him to prefer.

9. An application to the Board under section 185 shall be made in the same manner as an appeal, and shall, as far as may be, and subject to the preceeding rule, be dealt with in the same manner as an appeal.

Register of revision

10. A separate register, as nearly as may be in the form prescribed by rule 2, shall be maintained for all cases coming before the Courts on report or on revision.

10 Presentation of petitions and general conduct of business *

1-4. Presentation of petitions.

1. Every appeal and application to the Board of Revenue shall unless the Board by special order in any case otherwise direct, be presented to the Registrar of the Board's office at Allahabad.

2. Every appeal and application to a Commissioner shall, unless the Commissioner by special order in any case otherwise direct, be presented to the Head Assistant of his office.

3. Every proceeding which may be instituted in any court other than the courts above mentioned may be instituted during the absence of the presiding officer of the court from his head quarters office by the presentation of the plaint, application or appeal to the officer in charge of such office or to such other officer as the court may appoint in this behalf.

4. Nothing in rules 1, 2 and 3 shall be deemed to authorize an application to be made otherwise than to the Court itself where a date has been fixed for hearing a case and the application relates to any matter connected with the conduct of the case or with any proceedings in connection therewith.

5. Affixing of notices.

5. Every summons, notification or other document required to be affixed or published at or in a court house shall be affixed or published at or in the head quarters office of the presiding officer of the Court.

* Notification No. $\frac{2122}{1\text{-}571F}$, dated 16 July 1902 Gazette of 19th July 1902, page 471.

6. Petitions shall as far as possible, be taken at a fixed hour of which intimation has been given to the public, and shall, as far as practicable, be disposed of by an order passed in court as soon as they are presented.

6. Time of receipt of petitions.

7. A list of general holidays (as issued by the Board) shall be affixed in every court-house.

7. List of holidays to be maintained.

8. Without the consent of parties and in the absence of urgent necessity no case shall be heard on a general holiday.

8. Cases not to be heard on holidays.

Provided that on a general holiday the Court shall not refuse to do any act or to make any order urgently required which may with propriety be done or made out of Court.

9. A cause list shall be prepared in every Court every fortnight or at such shorter intervals as may be convenient, showing (*a*) the date fixed for the hearing of each case, (*b*) the number and description of the case, (*c*) the names of the parties, (*d*) the purpose for which the date has been fixed and, (*e*) place at which the case will be heard, or, if the case will be heard in camp, the place at which it will probably be heard.

9. Cause lists.

10. The cause list shall be affixed in some conspicuous place in the Court-house.

11. Whenever the Court is held away from headquarters, arrangements shall be made for the maintenance of the cause list at headquarters.

12. If on the day appointed for the hearing of a case in camp the Court is not sitting at the place specified and the parties are not present, either a fresh date and place shall be fixed for hearing the case, or the case shall be adjourned for a time sufficient to allow of the parties travelling from the place specified to the place at which the Court is sitting.

12, Hearing of cases in camp.

13. In addition to the cause list a book list shall be maintained in the language of the presiding officer of the Court showing the same particulars as the cause list.

13. Book lists.

14. In every process and order (of whatever description) issued or made by any Court, for whatever purpose it may be issued or made, the name of the district and of the Court from which the same is issued, and also the name and powers of the officer issuing or making it shall be clearly set out in such a manner that they may easily be read.

14 & 15. Entries in processes.

15. In every process or order appointing a day for the attendance in Court of any person or for the disposal of any business in connection with any proceeding pending before the Court, the place at which the Court will sit on that day shall be specified with as much accuracy as is possible.

16. The rules of the High Court for the time being in force as to the issue, service and return of processes shall, as far as may be, be applicable to all Revenue Courts.

16. Application of High Court rules as to processes.

17. The rules of the High Court for the time being in force as to affidavits shall apply, as far as may be, to all affidavits intended to be used in any Revenue Court.

17. Application of High Court rules as to affidavits.

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PRINTED AT THE "COTTON PRESS," 57, HARRISON ROAD, CALCUTTA.

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